ADMINISTRATION OF LAW AND ORDER

Editors :

N. K. SETHI

JAGDISH C. KUKKAR

The HCM State Institute of Public Administration

Indian Institute of Public Administration

Rajasthan Regional Branch, JAIPUR 302004

ABOUT THE BOOK

The developing countries are experiencing manifold transformations in the political, economic and socio-cultural spheres. However, the forces of tradition along with other resistants to change have cumulatively created innumerable stresses in the functioning of the social systems of emergent societies. An upshot of such tensions and stresses is the accentuation of law and order problems in the developing regions. Contrary to the traditional doctrines, these problems do not relate merely to the legal and administrative structures of a country. They are, in fact, profoundly intertwined with the socio-cultural and political subsystems of a society. It is appropriate, therefore, that the issue-areas pertaining to law and order should be objectively analyzed only from a systemic angle, for which this book has made a commendable attempt. The contributors to the present volume have discussed different dimensions of law and order in India from a conceptual angle as well as from an instrumental perspective. The book, with its empirical base and problem-orientation, is bound to stimulate the interests of academicians and practitioners of Public Administration alike. In its own limited area of specialization, it can easily be hailed as a bench-mark study.

RAMESH K. ARORA
Professor of Administration
The HCM State Institute of
Public Administration, Jaipur.

Administration of Law and Order

ADMINISTRATION OF LAW AND ORDER

Editors : **N. K. SETHI**
JAGDISH C. KUKKAR

Foreword : **S. L. KHURANA**

The HCM State Institute of Public Administration

Indian Institute of Public Administration
Rajasthan Regional Branch, JAIPUR 302004

Library Edition : **Rs. 25.00**

Paper Back : **Rs. 15.00**

Distributed by the Secretary, Indian Institute of Public Administration,
Rajasthan Regional Branch,
The HCM State Institute of Public Administration,
Jaipur 302004.

Printed at :
Jaipur Printers, Jaipur
Anima Printers, Jaipur.

CONTENTS

CONTRIBUTORS

J. P. BANSAL, Additional District & Sessions Judge, Alwar.

JAGDISH C. KUKKAR, Assistant Director (Research), The HCM State Institute of Public Administration, Jaipur.

D. R. MEHTA, IAS, Secretary to the Chief Minister, Rajasthan, Jaipur.

V. N. RAJAN, Special Inspector General of Police, Trivendrum, Kerala.

N. K. SETHI, Deputy Director (Planning), The HCM State Institute of Public Administration, Jaipur.

P. D. SHARMA, Reader in Political Science, University of Rajasthan, Jaipur.

SURENDRA SHARMA, Additionl Superintendent of Police, Government of Rajasthan, Jaipur.

M. L. SOOD, ISE (Retired), S-60, Panchsheela Park, New Delhi.

ACKNOWLEDGEMENTS

The encouragement to publish this volume came from Shri S.L. Khurana, Shri P. K. B. Kurup and Shri Hari Mohan Mathur. Shri Ram Singh, Dr. Ramesh K. Arora and Shri V. K. Gaur were good enough to go through the various articles and suggest some very relevant and useful modifications. Shri Sohan Lal Jain of Jaipur Printers has printed the book with care. Shri K. K. Parnami assisted in the printing of the book. Miss Neerja Shrivastava and Miss Shashi Mathur helped at the proof-reading stage. We are obliged to them all.

We express a special sense of gratitude to Shri S. L. Khurana who has been kind enough to write a perceptive foreword to this volume. We are also thankful to the Rajasthan Regional Branch of the Indian Institute of Public Administration and the HCM State Institute of Public Administration, particularly its Director Shri Hari Mohan Mathur, for agreeing to publish this work under their joint auspices.

We are also thankful to all the contributors to the volume.

N. K. SETHI
JAGDISH C. KUKKAR

FOREWORD

In the literature on public administration, generally a conventional distinction is made between 'development administration' and 'regulatory' or the so-called 'non-developmental' administration. It is contended that for the developing countries which are facing the crises of rapid socio-economic change, what is required is a strong emphasis on a goal-oriented and action-oriented administration, which in turn, would effectively achieve the progressive goals determined for the society through authoritative means. Such a concentration on a single value-structure—eufunctional as it may seem—has its own unintended consequences. For instance, it is entirely possible that the governing elite of a

country might overstrech the dogma of development at the cost of the regulatory functions of the state which are a pre-requisite to the growth of 'legitimacy' and stability of the whole politico-administrative system.

Post-Second World War experiences have very remarkably shown how crucial the function of the maintenance of law and order can become to the health and even survival of a civilized society. While a well-governed law and order system provides favourable climate for the enterprise of socio-economic development, absence of the former might result in a chaotic situation which, in turn, may eat into the vitals of the system and thus incapacitate it for any purposive growth. It is primarily for this reason that in the changed perspectives the nations of the Third World are attempting to create a balance between 'law and order' administration and the so-called 'development administration'. The rejection of dichotomy is the new and accepted article of faith among the elite of the developing societies.

Keeping this orientation in view, and considering the paucity of literature on the theme of law and order, the Rajasthan Regional Branch of IIPA (of which I happen to be the Chairman since early 1973) organized an essay competition

on the subject in 1973. The response of the academicians as well as civil servants to the invitations of the Regional Branch was enthusiastic. This is evident from the fact that 28 entries were received in the essay competition from all over India. The Executive Committee of the Regional Branch decided to publish the best five entries in the form of a book. Besides, it was also decided to commission three more papers specially for the volume from Shri D. R. Mehta, Secretary to Chief Minister, Rajasthan and Shri N. K. Sethi, Deputy Director, the HCM State Institute of Public Administration, Jaipur and Dr. J. C. Kukkar, Assistant Director (Research), the HCM State Institute of Public Administration. Thus the present volume comprises eight essays touching upon a variety of aspects of 'law and order' administration in the particular context of our country.

The volume covers an amalgam of approaches in its treatment—conceptual as well as empiricial, macro as well as micro, and normative as well as prescriptive. The essays have generally adopted an 'ecological' approach, thus viewing the issues from the perspective of prevailing or potential interactions between the law and order system and the dynamic environment in which it has to operate.

The Editors of the volume, the Rajasthan Regional Branch of IIPA and the HCM State Institute of Public Administration, Jaipur deserve kudos for bringing out the present study. I hope that it will stimulate more rational discourses on the issues that affect all of us so intimately.

S. L. Khurana

SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi
14 August, 1975

Introduction

Law and Order administration has acquired a new dimension in our fast changing world. An increasing trend toward persistent defiance of law and erosion of the principle of rule of law is noticeable in most countries. This is more evident in the countries which have attained independence during the last 25 years or so, and are witnessing a metamorphosis in social, economic and political spheres. Under the colonial rule the maintenance of law and order was the primary function of the state and the entire governmental apparatus was attuned to it. The laws of the state were strictly enforced and people had no right to challenge the restrictions imposed by the government. In some countries, of course, popular movements against the foreign rule emerged but the law and order situation, by and large, remained under the control of the government. The advent of independence has, however, introduced certain new factors into the dynamics of law and order processes. The validity of some laws is being challenged on the ground that these laws have lost their relevance in the new context. The situation has been further aggravated due to the inability of these states to enforce the much needed

social and economic discipline which is *sine qua non* for development. These nations have, therefore, been aptly characterised as soft states. We are thus witnessing signs of political instability in these areas which may lead to disorder and disruption. The problems discussed in this volume by the various authors mainly relate to this aspect of law and order administration.

Besides these, a number of questions have been posed which are quite relevant in the context of the changing perspectives of law and order administration in India. The focus has throughout been on problems pertaining to group violence and mass unrest. As these events signify a deep-rooted social malaise, an effort has also been made to diagnose and analyse the causes for such a phenomenon. This would help the politician and the administrator in evolving a proper strategy to counteract the forces of disorder and disruption.

The first article by Dr. P. D. Sharma raises some basic issues pertaining to law and order administration. He poses a number of questions regarding the legal system in our society e. g., Which laws are generally violated in a society and why ? What are the well-known and the newer categories of law breakers and what can be their motivations ? How often are laws broken, and what are the processes which are followed in such violations ? Does law-breaking revolve in a particular kind of pattern or is it just too ad hoc to be categorised for policy making purposes ? The answers to these questions, Dr. Sharma observes, more often than not explain the state of law rather than the state of order in a society. For instance, the student troubles on the campuses of Indian Universities or labour unrest in industrial establishments in the country are a sad commentry on the antidiluvian laws governing the educational institutions and providing unilateral protection to the industrialists, in the name of order and security at the cost of progress and social justice. The author further adds that the speed with which the parlia-

mentary apparatus has moved during the last two decades indicates that law in India has not only lagged behind but has acted as a brake and sometimes as a dead-weight on the wheels of social change. The legislators have emerged as a new class of vested interests and political articulation has failed to shape the laws effectively as demanded by social justice. The rulers or legislators in this connection need to be told about the nature and contents of change, which the masses desperately want. Hence the administration of law can never avoid disorders in a democracy if it fails to keep its statute books up-to-date by denying a catalyst role to the law. In regard to the administration of order in India, the author is of the view that violence is a relative term and what the Indian administrators of order call provocation might be the minimum in the perception of opposition politicians to register their protests effectively to reach to the statute books. If violence is to be defined in broad terms, then its prevention will end up as a mere maintenance of status quo. Perhaps the ideal situation, according to him, is where the law changes faster than the social system and order is validly accepted as objective law enforcement by legitimate authority. In his concluding remarks the author suggests a number of measures for reorganising and restructuring the entire administrative set-up pertaining to law and order.

Various causes that lead to lawlessness in our society have been discussed and analysed in detail in the next article. Mr. V. N. Rajan, the author, also suggests some measures that may help restore normalcy and sanity in such situations. Another area touched upon pertains to prevention and detection of crime with a view to bringing professional offenders to book. He favours a complete overhaul of the entire criminal prosecution machinery. The increasing pressure of law and order problems and security arrangements for VIPs, with which Station House Officers and their superiors are saddled, makes it necessary to divert more and

more investigations from them to specialised agencies like the Crime Branch of the CID which are uncluttered with the responsibility of having to face agitations, *gheraos*, *bandhs*, *dharnas*, *morchas*, and so on. That would mean perspective planning and reorganisation of the entire police department and a new officer-constabulary ratio with much larger direct recruitment of youngmen to the rank of Sub-Inspectors and the eventual evolvement of what will be mostly an offcer-oriented organisation to deal with crimes and a manpower-oriented organisation like the French riot police to deal with disorder.

In regard to the problem of discipline in the police force Mr. Rajan points out that discipline is an integrated phenomenon. A nation cannot have patches of discipline in a desert of indiscipline. However, no uniformed organisation can be permitted to do collective bargaining; nor can they be permitted to organise into trade unions. It is, therefore, essential that any lawlessness on their part should be eradicated ruthlessly. A two pronged drive is needed to achieve this end. First, a machinery should be institutionalised for Police Officers and the constabulary to ventilate their genuine grievances and get them redressed. Second, the erring ones among them should be deterrently dealt with.

In his article on "Changing Perspectives of Law and Order Administration", Mr. M. L. Sood has raised the issue of the inadequacy of numbers in the police force in the changed circumstances. In most law and order situations the clash is precipitated as the mob is clearly aware of the small force available to deal with the situation. In such circumstances the inadequacy is clearly a catalyst that provokes a crowd into taking greater liberties that it would not otherwise have taken, i.e , if the police–crowd ratio were somewhat higher.

In this connection, we may also cite certain figures relating to Delhi police that would highlight to what extent the law and order machinery is handicapped even in a metropolitan city.

Delhi with a population of over four millions has only 18 wireless patrol vans. London with a population of seven millions has 317. The police population ratio is 1:2100 against an optimum of 1:425. The number of policemen for beat duty, important for preventing crime and collecting intelligence, is also inadequate. Morever, a sizable section of the force is often busy on VIP duty.

Regarding the role of magistracy, Mr. Sood has rightly emphasised the need for developing a well informed and knowledgeable magistracy. A magistrate should be well acquainted with his area and should know its criminal history and the law and order disturbances that have developed there in the past and how and in what way future disturbances could possibly occur?

In his article entitled "Law and Order : Eternal Vigilance", Mr. J. P. Bansal observes that this problem has got so inextricably mixed up with the other socio-economic problems that it cannot be wholly or partially divorced from them. The administration of law and order has, thus, to be viewed in the context of poverty, population explosion, corruption, indiscipline, strikes and *bandhs*. Suggestions offered by the author in this regard are : reorganisation of the police force, which is hated and dreaded rather than loved and respected; making the district magistrate more effective by posting only senior and seasoned officers on this position; simplifying the legal procedures etc. Mr. Bansal concludes with the remark that the problems of law and order cannot be considered, analysed and dealt with in isolation from other manifold socio-economic problems.

The emerging patterns in law and order administration have been highlighted in Mr. Surendra Sharma's article. Some of his observations are based on a survey of 'Agitations in Rajasthan' conducted by him, which produced quite useful data. The controversy pertaining to the dual control of law and order administration in a district has also been dealt with

in this connection. He observes that the district magistrate has an important role to play in the maintenance of law and order. However competent the police may be, there is always an advantage in having the advice of an agency which is outside and yet has an identity of aim—the restoration of peace. The district magistrate can truly act as an adviser, friend and guide. There is another reason. The police being too intricately involved could sub-consciously be swayed by considerations not strictly warranted by the situation. The district magistrate, on the other hand, could by virtue of his position, be the focal point of people's attention and thus could exercise some salutary influence. Mr. Sharma is, however, of the opinion that the district magistrate does not have a role in crime control and organisation and discipline of the police force.

Other useful suggestions thrown in this article are the creation of an Indian Police Administrative Service in place of Indian Police Service, a system of lateral entry from IPS to IAS, setting up of an All India Police Commission, induction of police officers in State Secretariats and, the creation of Research and Planning Units under the Home Departments of the States. These suggestions deserve careful consideration.

The impact of new Criminal Procedure Code on maintenance of Law and Order has been discussed in an article contributed by Shri D. R. Mehta. While commenting upon the provisions regarding the separation of judiciary from the executive under the new Cr. P. C., he observes that as a result of this contacts between police and magistracy have become less which adversely affects maintenance of law and order. The only time a magistrate is remembered is when the law and order situation takes a serious turn. Since he is getting cut off from the general trends of law and order, the chances are that he would not prove effective in such circumstances. The old concept of deliberate duality in the matter of law and order, so as to reduce the excessive use of force by providing a cushion

in a matter of involving human life, is being threatened. The chances are that with this development, there might be more firings and more killings, a result surely not intended by the framers of new Cr. P. C. The author has further thrown some useful suggestions for improving contacts between police and magistrates. Another impact of the new Cr. P. C., according to Shri Mehta, will be that it will make the executive more executive minded as under the new system the executive magistrates have very little court work. The remedy suggested by him is that there should be a regular arrangement with the High Court under which all the executive magistrates, at least in the beginning of their careers, are made to work as judicial officers.

Shri Mehta observes in his concluding remarks that the new code has relied too much on the theory of the separation of powers. The present situation, therefore, demands some supplemental efforts so that the law and order enforcing agencies are not hamstrung.

The main theme running through all these articles pertains to the increasing incidence of lawlessness in our society which has, of late, acquired threatening proportions. The problem should be of vital concern to every civilized government and more particularly to a developing country like India having a big stake in the maintenance of peace and order which is the *sine qua non* for development and progress. In the context of the conditions prevailing in our country the extent of lawlessness has a direct bearing on the tempo of development. Firstly, it has eroded the credibility of the ruling apparatus and secondly, it has served as an open encouragement to the forces of disruption and disorder. The lack of social and economic discipline, which is inherent in a 'soft state', has further aggravated the situation. Some political commentators have gone to the extent of calling our polity a 'functional anarchy'. These are warning signals and we can ignore them only at our peril. It is time that a national consensus is

evolved relating to a proper strategy for law and order. This would involve a fresh thinking on the legal system in the country as well as a complete reorganisation of the law and order machinery. The problem has also to be viewed in the context of extreme poverty and socio-economic inequalities present in our system which breed instability. Respect for law and order, therefore, cannot be taken for granted unless the magistracy, the police and the citizen show a greater appreciation of their new roles in the changed circumstances. Our effort has been to place before the readers these emerging issues which perhaps deserve greater attention than what they have received so far.

Law And Order Administration : Some Basic Issues

P. D. Sharma

One of the conceptual fallacies that surrounds the administration of Law and Order in the transient societies[1] is the belief that maintenance of order is identical with the implementation of laws. The former colonial masters inducted some of these societies to the formalism of 'Rule of Law'. The static concept and the rigid apparatus of law were deliberately used as instruments of status quo in the midst of nationalistic resurgence brewing in these societies. This sacrosanct approach to law, and the status quoist approach to order[2] established a tradition that the administrators of order should not question the validity and inadequacy of the given laws. Rather, they were

1. Refer to 'Administration in Transient Societies' in Bhale Rao (Ed.) Administration, Politics and Development in India, Lalvani Publishing House, Bombay, 1972, pp. 3-80.
2. Moon, Penderel (Ed.): Wavell : the Viceroy's Journal, Oxford University Press, London, 1973.

urged to come out with all their might to defend and enforce such laws which even in their own opinion were reactionary and retrograde. This unique historical situation in which the laws were enacted in the imperial capitals and were executed by the native officials, resulted in the evolution of a complex administrative machinery along with such administrative processes, that insulate law-making operations from the compulsions of law enforcement. Even when some of these compulsions were obviously registered in the Imperial Parliaments,[3] the endeavour of the colonial masters had been to resist these changes successfully. The colonial interests and the liberal philosophies of the mother countries demanded that the socio-political changes in the colonial establishments should enter only through a back door.

The post independence era in these societies of erstwhile colonial world, including India, is characterised with rapid changes and violent upheavals in the two separate worlds of Law and Order respectively. The democratic regimes superimposed upon these feudal societies of the past, face the dilemmas of democratic development.[4] The status-quo-ist concept of order slows down the pace of formal change and the democratic apparatus tends to gloss over the socio-economic structure of these societies, which is essentially class-based and elitist in character.[5] The popularly elected leaders find the colonial Laws beneficial to their personal and party ends

3. Sitaramayya, Pattabhi : The History of the Indian National Congress, Padma Publications Ltd., Bombay, Vol. I (Reprint 1946).

4. For a more lengthy treatment of this theme, See, Wilcox Wayne, New Nations : The problem of Political Development. The Annals, Vol. 358, March, 1965. Also See, Rosen, George : Democracy and Economic Change in India, University of California Press, Berkeley, 1965.

5. Misra, B.B. : The Indian Middle Classes : Their Growth in Modern Times, Oxford University Press, New York, 1961.

and when status quo tends to serve the political interests of the ruling elite, it declares all disorders as a menace to democracy.[6] But then, mass education and adult suffrage, which people in these societies and especially in India, have attained as a culmination of a long drawn out political process generate multi-pronged forces of change which the administrators of Law in these societies tend to dread as forces of disruption and even sabotage.

It is in this context of dichotomous situation that the present study seeks to examine some of the basic issues involved in the administrations of Law and Order. The hypothesis being that the two administrations of Law and Order are not the same, the Paper will attempt to analyse and evaluate the two separate categores of the problems independently. The third or the last part deals with the inter-relationships of the problems in the two areas. The analysis and projected solutions have been discussed in the light of Indian experience of last two decades.

I

A comprehensive view of Law and Order administration must include five different stages involved in the processes of law and order enforcement. These are :

1. Making of the Laws
2. Detection of violations of the Laws
3. Arrest or suppression of offenders and illegal activities
4. Prosecution and punishment to convicts, and
5. Amendment to the Law.

---

6. At least this has been the logic for the enactment and enforcement of Preventive Detention Act (1952), Maintenance of Internal Security Act (1971) and the Defence of India Rules, 1961.

The first and the last phases represent end-processes relevant to the administration of law, while the rest of the three stages in between involve C.I.D., intelligence, armed Police, Magistracy and Jails, which constitute the administration of order. Both the kinds of administrations get conjoined into an integral whole through the office of the Home Minister or Chief Minister, who supervises both the operations of enactment and enforcement at all levels. This political aspect of law and order administration, besides being new to the Indian situation, is unique and central to the entire problem of law and order in a Parliamentary democracy.[7] The legislators look to the Home Minister for legislative-cum-political leadership in Parliament and the custodians of order expect this minister to be firm and clear, while steering the ship through the rough and tumble of democratic politics.

Law in all societies of civilized world has cohesive orientations for purposes of social solidarity.[8] The ends of justice, which it seeks to serve are always defined by those who author the laws in a given society at a given period of history.[9] Of course,

7. On this problem see an article by Dilip Mukerjee, "The P.A.C. Mutiny in U.P.—Ministerial Incompetence : Hindustan Times, May 26, 1973.
8. Law in Social theory has several varieties of meanings. "Some apply the term to rules of social conduct, which every where men of intelligence and disposition understand.....Anthropologists apply the term to any uniformity of social behaviour.....Others consider that laws are the rules that have the stamp of some moral approval, a sense of right of the community.....or the dictates of (one's) own conscience. Others again call laws the customs that have certain social consequences.....the behaviour patterns that tend towards Social Solidarity. With others laws are the rules that are backed by the comprehensive and compulsive social institution, we call the State. Cocker, F.W. : Recent Political Thought, Appleton Century, London, 1934, P. 541.
9. Kumarmangalam, S. Mohan : Judicial Appointments : An analysis of the recent controversy over the appointment of the Chief Justice of India. Oxford and IBH Publishing Co., New Delhi, 1973.

the political philosophies of these author-rulers provide varying contents and relative meanings to the dead letters of law. Yet all law codes in all societies operate by virtue of legitimacy and their social acceptance is ensured by socialising citizens into those norms, which the law seeks to profess.[10]

In a developing society like India where the colonial philosophy of status quo oriented law has all of a sudden been replaced by a philosophy of democratic transformation[11] through law, confusions and inconsistencies in the world or law are natural and inevitable. The wide and still widening lag between the processes of institutionalisation and economic performance by the political system[12] creates problems of nucleus change in the socio-cultural class structure of the society which the status-quo-ist law has hitherto failed to demolish. The political leadership which the system has thrown through a process of democratic recruitment tends to be alienated, and still more elitist[13] with the result that the concept of law does not match with the speed of social change. The intensity of politicisation and the frailities of institutionalisation generate forces of imbalance in the system. Consequently, the formal world of law looks for extra-legislative methods to make legislation up-to-date and socially meaningful in contents.

---

10. Cardozo, Benjamin N. : The Nature of the Judicial Process, 1921 pp. 11, 12 and 174.

11. Nehru, Jawaharlal : Jawaharlal Nehru's Speeches (March 1953-April, 1963) Publications Division, New Delhi, Vol. III, pp. 113-158 and Vol. IV, Pp. 69-108.

12. Kothari, Rajni : Politics in India, Orient Longmans Ltd., New Delhi, 1970, Context of Political Development, pp. 2-5.

13. Rai H. & Singh S.P. : Indian Bureaucracy : A Case for Representativeness, Indian Journal of Public Administration, Delhi, Jan. 1973, Pp. 1-16. Several case studies on Political leadership in Rural and Urban India also testify to this, See Park and Tinker : Leadership and Political Institutions in India, Oxford University Press, Madras, 1960, pp., 391-469.

A look at the basic issues pertaining to the processes of initiation, amendment, revision and annulment of laws in a society forces us to ask the relevant questions. Which laws are generally violated in a society and why? Who are the well-known and the newer categories of law-breakers and what can be their motivations ? How often are laws broken, and what are the processes which are followed in such violations? Does law-breaking revolve in a particular kind of pattern or is it just too adhoc to be classified into categories for policy making purposes ? The answers to these questions, more often than not, explain the state of law rather than the state of order in a society. For instance, the student troubles on the campuses of Indian Universities or labour unrest in industrial establishments in the country are a sad commentary on the anti-diluvian laws governing the academia and providing unilateral protection to the industrialists, in the name of order and security at the cost of progress and social justice.

It is not merely a question of Marxian Interpretation of law and society[14] but all laws in all societies tend to be conservative and slow-moving. They represent continuity themes rather than change variables in the evolution of social systems.[15] A developing society which by definition needs more of change and less of continuity contents, has real problems in the realm of law. These problems become all the more grave when the legal system of the country is entrusted to a very sophisticated mechanism of Parliamentary institutions and social change in contrast, is left wide open to the wild pulls and pressures of over politicisation.[16]

14. Afanasyev, V : Marxist Philosophy, Foreign Languages Publishing House, Moscow, 1962, Pp. 94–96 and 186.

15. The Roman concepts of 'LEX', or 'JUS' implied the nations of 'Established usage' and 'Sense of right', which all laws all over tend to respect and represent.

16. Nair, P.P.R., : Indian Legal System vis-a-vis the Social set up of the country. Transactions, National Police Academy, Mt. Abu, Vol. XI, Nov. 1968. Also see, Swerdlow Irving (Ed.) Development Administration, Syracuse University, Syracuse, 1963.

The continuum of legislation from initiation to revision raises several questions of philosophy, authorship, participation, enforcement and violations. In the Indian context, some of these problem areas in the administration of law can be identified as below :

1. If the law-makers and law-breakers simultaneously sitting in a legislature alternately indulge in an exercise of law-making and law-breaking, can any law authored by such an inarticulate group command any respect from the citizens at large ?

2. How can the executors of law dedicate and devote themselves whole-heartedly to the administration of that law, the enactment processes of which rule out their organisational participation and professional commitment ?

3. As all laws have a tendency to be amended piecemeal, how can a conservative administrator accept the change part of the law as more vital as compared to the continuity part, inbuilt in the very structure and nature of the laws ?

4. Should law follow social change or should the latter be spearheaded by the former ? In case law is to register or legitimise socio-political change, then some amount of law-breaking is a part of the game. But, if the reverse proposition is true, then, can law-making-enterprise be entirely divorced from the operations of law enforcement ?

These questions add unconventional dimensions to the traditional concept of Law and Order, which seems to be in vogue in developing countries. These countries profess radical goals and swear by new concepts of egalitarianism and social

justice.[17] Some of them, like India, enshrine these ideals in the higher law of the land, i.e. the Constitution.[18] The courts in India quote them every day in their pronouncements.[19] The political parties of all colours and shades urge upon the people[20] to fight for these freedoms, which the Constitutional Law of the land guarantees. But, the speed with which the parliamentary apparatus has moved during last two decades indicates that law in India has not only lagged behind but has acted as a brake and sometimes as a dead weight on the wheels of social change.[21] The legislators have emerged as a new class of vested interests[22] and the political articulation has failed to shape the laws effectively in the interest of social justice.[23] Naturally, the rulers or legislators need to be told about the nature and contents of change, which the masses desperately want. If the ruling legislators do not realise this, the opposition leaders are there to make them realise about the profiles of impending changes. Hence, the administration of law can never avoid disorders in a democracy, if it fails to keep its statute books up-to-date by denying a catalyst role to the law.

Moreover, to have mere radical laws is also not enough.

---

17. Gajendragadkar, P.B. : Law Liberty and Social Justice, Asia Publishing House, Bombay, 1965.
18. Constitution of India, Chapter IV.
19. See R.C. Cooper v/s. Union of India, A.I.R. 1970, S.C., 564, and Keshvanand Bharati v/s. Union of India, A.I.R., 1973, S.C. 1461.
20. Refer to Election Manifestoes of various political Parties on the eve of Fourth General Elections in India. Chandidas, R., et. el. (Ed.) India Votes : A Source Book on Indian Elections. Popular Prakashan, Bombay, 1968, Pp. 5-145.
21. See 'Lok Sabha Mein Lohia', Nav Hind, Hyderabad, 1973.
22. Roy, R. and Kothari S.L. : Relation between Politicians and Administrators at the District Level : I.I.P.A , Delhi, 1969.
23. Gajendragadkar, P.B., : Law Liberty and Social Justice, Op. Cit. Pp. 30 and 71.

Progressive legislation at the hands of conservative public servants may also create a queer situation of stagnation. Hence, unless the implementers of law are inducted to the formulation of legislative policies, the administration of law may remain devoid of its meaningful contents. Again, India is an example in point where the administrators of law have been implementing 'lettre sans spirit' with the result that even quite progressive laws of recent past have instilled anti-authority bias among the citizens.[24] In a country where ministers and legislators go on strikes in protest against the policies and laws sponsored by their own governments[25] and senior administrators privately as well as publicly talk about the rape of law, how can the 'Majesty of Law' be maintained against a wholesale contempt of law by all the sections of the citizenry ?

Naturally, the answers to these difficult questions cannot be simple or ready-made. Nonetheless they cannot be avoided or postponed either. A thoroughly discredited and outdated system of Civil Law cannot ensure the lofty ideals enshrined in the highest law of the land. As the elected representatives of the Indian people have failed to measure up to 'the Will of the Founding Fathers of the Indian Constitution', the conflicts and deficiencies of the Civil Law have to be made good effectively in letter as well as in spirit. Unless this is done the Civil Law of the land has very meagre chances of being respected by all those who have been exposed and inducted to the sublime idealism of the Constitution during last 23 years of its working.

Pushed further, it boils down to the unrepresentative character of our elected legislative bodies. It is a serious pointer

24. Shekhar R. : Law and the Layman, Transactions, National Police Academy Mt. Abu, Vol. VI, Nov., 1965.

25. Misra, S.C. : Police Administration in India, National Police Academy, Mt. Abu, 1970, Pp. 248–49.

towards the defective electoral laws[26] of the country and the radical reforms they warrant. The colossal expenses at the polls which the electoral laws forbid, but the electoral processes entail, demostrate the shocking state of formalism. It has resulted in situation in which the categories of laws to be respected and the kinds of laws to be violated by the citizens have become increasingly and confusingly difficult to identify. The law-makers reach to their positions as legislators only after having violated a couple of laws of the land.[27] Hence, in a situation where 'law-breakers' alone can become law-makers', how can one expect that they will switch over their allegience to unpalatable laws, while in power ? This leads to all kinds of clandestine operations of the 'Law of the Jungle' in the very seats of Power,[28] which ultimately erodes all faith of the common man in law abidingness. The socio-psychological repercussions of this 'Ecology of Disrespect of the Law' is an open invitation to lawlessness, disorder and even violence.

Hence, to begin with, the elected representatives need conti-

---

26. See the Special issue of the Journal of Constitutional and Parliamentary Studies on 'Elections and Electoral Reforms in India', Indian Institute of Constitutional and Parliamentary Studies, New Delhi, Vol. IV, No. 4, October–December, 1970.

27. Refer to the judgement of the Supreme Court of India in A. Thangal Kunju Muddalier v/s M. Venkatachalan Patti, A.I.R., 1956, S.C. 246.

28. The Governor of Bihar, Mr. Bhandare in his recent tour of Maharastra State is alleged to have stated that : "There is adequate documentary and other evidence to dismiss four ministers and eighteen officials for their nocturnal activities..... (and) he is waiting for President's Rule to be promulgated in the State (Bihar) to take action against the guilty ministers and officials." Times of India, 15th October, 1973, Editorial, 'Foot and Mouth'. Similarly, the creation of the institutions of *Lokpal* and *Lokyukatas* at the Centre and the State is a testimony to the fact that the Law of the land has been inadequate to deal with Political corruption through the normal court system of the country.

nuous and organised political pressures to make the Laws up-to-date and respectable in deference to the wishes of the Founding Fathers. The public servants who suffer organised and unorganised public wraths need to be consulted on a participant basis. An effective organisation of legislators and concerned administrators may be devised to avoid the obsolescence of the conservative laws in a progressive society like India, confronting compulsions of change and growth.

II

Turning to the administration of Order, let us for a moment accept that order in a society lies in faithful and peaceful observance of the given laws by the citizens, no matter what has been the process of their enactment. Here again we are not concerned with individual designs of law-breaking, like thieving, burglery, murder, rape etc., popularly known as conventional crimes. In all societies such deviant behaviours of some diseased individuals exist and the police, the law courts and the jails are there to take care of them. But wholesale or mass defiance of public law at a political plane is a different thing and should be viewed as a problem more in the area of politics than in the area of administration. Still the administration cannot absolve itself from the basic responsibility of Law and Order for which politics has assigned it a specific responsibility. In the developed countries where legitimation has reached a stage of mass acceptance and a consensus exists about basic principles underlying public policy, the administration of law faces a bigger challenge than the politics of legislation.[29] In India where legislators and administrators both suffer from elitism and alienation,[30] the problems of social change through

29. Refer Campus Unrest, Pt. II, Texas Police Journal, Vol. 19 Dec. 1971, p. 4, and American Black Ghetto Revolt : New Perspective, Police Journal, Vol. 45, Jan.–Mar. 1972, p. 13.

30. Roy, R. & Kothari, S.L. : Relations between Politicians and Administrators at the District Level. Op. Cit. P. 180.

disorder or law-breaking are attributed to each other's blindness and inefficiency. The politicians want to keep order or law enforcement in the society, but simultaneously they also want to tinker with these laws arbitrarily.[31] They profess about progressive legislation, but do not want to press its implementation at the risk of their political career at the polls.[32] They appeal to the citizens to be law-abiding, even when daily necessities disappear from the markets, but they themselves want to get away with law-breaking, causing increased corruption without subjecting themselves to the indignities of the chaotic queues at ration shops.[33] The administrators, especially the policemen, have been brainwashed in their traditional definitions of crime and still more in the procedures that deal with it. They always look for offenders amongst 'Non-Rulers' and have neither courage nor vision to implement law with an iron hand.[34] The feudal and Colonial legacies make the administration ruthless where the

---

31. Recently the Har Chand Committee in Punjab reported that very senior Political leaders of the State including the Speaker of the Vidhan Sabha were involved in unlawful grabbing of the Government land. See, Noorani, A.G.: 'Exposures of Land Grab in Punjab', Indian Express, New Delhi, August 12, 1973.

32. The 'Garibi Hatao' programme and the policy of progressive Nationalisation or State takeover of Private Trades, including Food grains, initiated by the Socialist Government of Mrs. Indira Gandhi and their halting implementation are the examples in point.

33. The popular belief has been that the recent hoarding of wheat in violation to the take over laws of the State and the artificial scarcity of the consumer goods were largely created by big farmers and big businessmen who were either politicians themselves or did so at the connivance of some big politicians, who shielded them.

34. The Policemen do not accept this view. For their professional view on this subject, See a Syndicate Study on 'Police and the Rule of Law', Transactions, Vol. XVI, Nov. 1971. National Police Academy, Mt. Abu.

lowliest and the lost are involved.[35] But, when it comes to deal with ruling offenders the administrators of the Soft State[36] not only become accomplices, but search for alibis to fill up the blanks of the procedures, established by law.

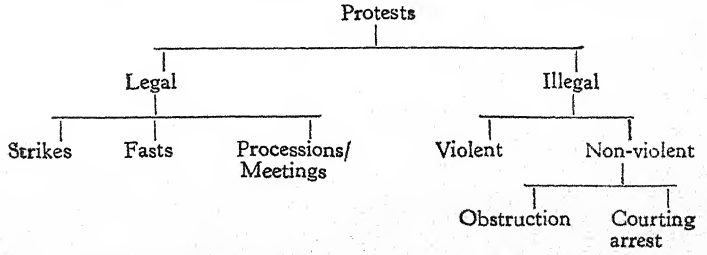
Free India has witnessed all kinds of public disorders during last twentyfive years.[37] All sections of society, students, labour, public servants, *Adivasis* communalists, regionalists, language fanatics, even *Sadhus* and recently the Policemen have indulged in wanton public agitations of violent variety. The anatomy of these public disorders reveals a deep-seated malady which symptomatically manifests through processions, strikes, *Bandhs, Gheraoes, Dharanas, Bhookh-Hartals and 'Atmadahas'*. The way the administration of order traditionally responds to these events of violation of law is to : —

---

35. Writing in Columns of 'Amrit Bazar Patrika', Calcutta on October 29, 1966, late Dr. Sampurnanand observed : "If a Shop-keeper has to close his shop, he has no redress. A Cinema owner who is beaten up, can get justice no where, cases may be instituted as a matter of formality, but every one knows that they will be withdrawn." On the contrary, the youthful students "have been made to feel that they are above the law."

36. Myrdal, Gunnar : The Soft State, Penguin Books Ltd., London, 1972.

37. The Baylay Study has classified and arranged these disorders in the following diagram :



Bayley, D.H., The Police and Political Development in India, Princeton University Press, N.J., 1969, P. 256.

1. impose Section 144;
2. close the institutions;
3. clamp curfews;
4. round-up a few miscreants;
5. prosecute those involved in violent activities;
6. ultimately negotiate, bargain and reach some agreed settlement; and
7. release all those arrested in the process.

Typically enough the agitational methods have Gandhian overtones without any commitment to his 'Satya' or 'Ahimsa' and the administration's response is exactly British without playing a Michael O' Dyer. The absence of Gandhi and the availability of brute struggle for the seats of power, coupled with increasing erosion of moral values has enhanced the element of violence and wanton destruction of public property.[38] Similarly, the ideals of liberty, equality and social justice enshrined in the Constitution[39] have restrained the administrators to conform to humane methods under the constant dread of future judicial inquiries. But, these changes apart, the basic structure of social disorder and the methodology of the administrative machine remain where they were in the colonial past.[40] It is true that experiments in this realm are fraught with risks. But, it shall be equally risky if the administration of order goes on getting softer in the name of

---

38. Aiyer, S.P. : The Politics of Mass Violence in India, Manaktala, Bombay, 1967.
39. See, Preamble of the Constitution of India, Publications Division, Government of India, 1970.
40. Sharma, P.D. : Law and Order Administration in India : Administrative Challenges of the Seventeenties, Indian Journal of Public Administration, Delhi, Oct.-Dec., 1971 Pp. 754-85.

democracy against the mounting waves of violence and sabotage, which democratic methods generate and developmental politics accentuates.

At this stage let us identify the major problems that plague the administration of order in a situation as it obtains in India. The basic issues leading to these problems are :—

1. Can the need for desirable changes in law enactment and law enforcement be organisationally detected ? If so, can these changes be peacefully initiated through legislation, without involving some kind of disorder or law-breaking by political leaders in a parliamentary democracy ?

2. At what stage and under what provocations a non-violent or peaceful public agitation allowed as a part of freedom to organise and protest in the Constitution becomes a violent disorderly and dangerous activity, menacing peace and security of the community ?

3. Can law and order administration do something to avoid its confrontation focus of law and order strategy and gear its energies to a new preventive techniques, which may reduce the chances of ultimate showdowns ?

4. Are traditional tools and procedures valid enough to face complex political situations inventing newer techniques of Police harrassments, like hijacking of buses, forcible occupation of Government buildings, disruption of communications and kidnapping of Police officials ?

Conceptually speaking, there is a very thin line between order and disorder in society. The moment the law ceases to be legitimately valid, disorder can be declared a healthy catalyst.

Mahatma Gandhi's breaking of the Salt Law was a disorderly activity, which the historians today find desirable also. In other words, all disorders in developing societies are not unhealthy, nor do they need loyalist resistance by a status-quoist administration. Actually, law should allow some leeway to so called disorder so that the rejection of certain laws may pave the way for the initiation and legitimisation of newer laws conducive to the dynamics of social change. Here it can be argued that the legislators coming through changing winds of Poll alone are the best judge to revise laws. But again, the mechanics of the Parliamentary system and the democratic need to change legislators also pre-suppose some kind of compaigning and popular protests against the policies of the Government. This is the 'rasion de etre' of the right to freedom and the availability of multiple political parties in a democratic system. If the poiitical parties do not break laws enacted by the parties of the opposite creed, there is very little which they can oppose or offer as an alternate programme.[41] Hence, the Magistrates or the Policemen who handle irate mobs and demagogic leaders should dispel this misapprehension that their job lies in preserving the dead letters of law. This does not mean that they condone or encourage all political disorders. What needs to be understood is that as custodians of peace and order, the administrators should maintain a sense of proportion and allow the processes of democracy to operate freely in a manner that marginal disorders consistent with social equilibrium may permit and even force change in the Statute Books, which the administrators in general tend to look as Bibles.[42]

---

41. For a detailed study of the Role of Opposition Parties in a democracy, see Michels R., : Political Parties, Dover Publications Inc., New York. 1959.

42. This seems like a universal phenomenon. See Love, H.D. : Attitudes and Knowledge of Non-Police and Policeman towards Law and Law Enforcement, Police, Vol. 16, Sept. 1971, P. 9.

One such criterion that distinguishes between healthy and unhealthy disorders can be worked out on the basis of availability of violence and its proportions of reasonableness. Of course, the term violence can be defined objectively by law[43] but its proportions of reasonableness are always liable to be interpreted subjectively. For instance, breaking window panes of a University office, costing Rs. 20/- is violence, but does it justify counter-violence involving orders for firing is a decision dependent upon the appraisal of the conjunction of events, constituting the configuration. This conjunction and configuration should not be viewed in loyalist terms of traditional law and order administration. Only a Police man or magistrate endowed with deep insights of social psychology can afford to read this situation objectively. Mere intellectual brilliance may dread violence and may tend to exaggerate it.[44] Peace and violence constitute the law of life and to think about them in absolute and exclusive categories is to miss the wood for the trees. Again, violence is a relative term and what the Indian administrators of order call provocation might be the minimum in the perception of opposition politicians to register their protests effectively to reach to the Statute books. If violence is to be defined in broad terms, then its prevention will end up as a mere maintenance of status quo. For instance, a Gherao of an exploiting industrialist or for that matter of a senile Vice-Chancellor is a violation of law, invoking violence. But then, the question is that if he does not listen to the constitutional protests of the aggrieved, should fundamental freedoms be abdicated in preference to ineffective non-violent means ?[45] Naturally, the

43. The Chambers' Twentieth Century Dictionary defines violence as 'The state or quality of being excessive, unrestrained or unjustifiable force, Outrage, profanation, injury, rape.' p. 1234.

44. Cromwell and Lewis, Crowds, Mobs, riots : Sociological Analysis. Police, Vol. 16, Sept. 1971. p. 30. Also see Six Sociological Essays (ed.) David J. Bordua, John Wiley and Sons Inc., N.Y. 1967.

45. For a thorough and academic discussion on the Right to Strike, see Dhyani S.N. : Right to Strike, S. Chand & Co., Delhi, 1972.

Policeman and the magistrate, who were supposed to be the deaf and dumb organs of law in the past have to act today as its living tools. After all suppression of mass violence always generates more violence on the part of the government and the reprehensibility of violences does not diminish simply because a so-called legitimate authority indulges in it in the name of law.[46] The new research in the law and order administration indicates that official violence has provoked more popular violence in a non-violent society like India.[47] The government almost had an exclusive monopoly of violence when the popular violence was literally non-existent in the Gandhian period of Indian history. No sane person can advocate violent upheavals in a stable and progressive society but this is highly unfair, if the governmental violence is condoned, even when it is invited by popular leaders and provoked and intensified by loyalist and elitist officials. The administration of order has to view and understand the concept of 'bilateral violence' in the context of existing class structure of the Indian society and has to respect each life whether it is that of the labourer or that of the Police Sub-Inspector. The issue is who defines violence and ultimately

46. At least the Doctrine of Non-Violence in Gandhian Politics implied this. See Murty, V.V.R. : Non-Violence in Politics, Frank Bros. & Co., Delhi, 1958, pp. 207–36.

47. Some statistical data pertaining to the incidence of this Governmental violence are :

Period	State	Incidence of Firing	Total Numbers of Police Firings
1941–47	Madras	50	1947–65—2,000, or
1948–65	Madras	123	9 per
1958–65	Bihar	69	month
1962–65	Bombay	19	Persons killed : 1875
1947–65	Delhi	30	Persons wounded : 4984
1947–62	West Bengal	400	

Source : Misra, S.C. : Police Administration in India, National Academy, Mt. Abu, p. 254.

when the chips are down, who sits in judgement about its proportions and with what motives and purposes ?[48]

Another problem which prof. Bailey has also raised in his able book is the problem of changing the focus of attention in evolving the administration of order in resurgent India.[49] Historically the guardians of law and order have administratively concentrated more on the confrontation aspect of agitations rather than on the preventive side of the breach of law. It was natural because it was much easier and manageable to confront Gandhian non-violent Satyagrahis then to prevent Gandhiji's popular mass agitations at source. In a democratic situation, where political parties master mind political agitations or public disorders and that too in the vulgar pursuit of sheer power, prevention is certainly a more feasible and sensible remedy than avoidable confrontations. Today, if the Government try to devise new methods to face irate mobs, the political parties are better equipped to invent newer techniques of effective violence and image shattering of the Government. Moreover, confrontation rarely punishes the guilty, but always results in scandals about police excesses presenting the Government as a villain of peace.[50] Of course, no government worth the name can avoid all political confrontations, but the administration of order should have a regular and well laid out policy[51] based on facts for preven-

48. That is why after every incidence of firing, there is a popular demand for a judicial inquiry into police excesses and in all Police Conferences and Seminars, there is an overwhelming resentment against it.

49. Bayley, H.D. : Police and Political Development in India, Princeton University Press, New Jersey, 1969.

50. Ibid., p. 272.

51. Prof. Bayley has suggested six objectives of this policy :
    1. lessening the cost and disruption of social processes;
    2. preserving the legitimacy of government;
    3. defending the primacy of majority rule;
    4. protecting the sanctity of law;
    5. off-setting disorderly and disruptive politics; and
    6. reinforcing the sense of social discipline. Op. Cit, pp. 280-81.

tion of disorders. Hitherto the positions in the C.I.D. and intelligence wings of the Indian Police have been rated as second class jobs[52] and the inadequacy of staff support has rendered only a lip service to preventive measures. Certainly a democracy can only ill-afford an elaborate organisation of regular secret police like the K.G.B. or F.B.I., but then its total absence is also a risk not worth running. Prevention focus here simply means that a specialised Intelligence Organisation should feed facts to the policy-making apparatus[53] which at present is either too fragile or too much encumbered with the challenges of complex confrontations.[54]

Still the preventive policies or prevention oriented administrative organisations of order are no substitute for emergent situations of confrontation. It is a pity that the Indian Police handles all kinds of Political demonstrations and upheavals with the same classical 'lathi' and armed police of para-military variety. These quasi-soldiers with absolutely no training experience in social psychology are exposed to unprecedented democratic violence in the field. They use the same mediaeval tools for the restoration of order, no matter the venue is a factory or a University. The law which their seniors operate is by and large the same. The magistrates who declare the assemblies unlawful and order for firing or curfew etc. employ the police force as their errand boys. The innocent and the ignorant are punished on the ground that ignorance of law is not a valid excuse for exoneration. There is no provision for summary trials or special procedures. The

52. Refer to Syndicate Studies on 'Remedies of Lawlessness in Law Enforcement Transactions, National Police Academy, Mt. Abu, Vol. XIV, Nov. 1970, and 'Adequacy of Intelligence Regarding Law and Order at the District Level', Transactions, Vol XVI, Nov. 1971.

53. For details see Law and Order Administration in India, C.B.I. Bulletin, Vol. VI, Jan. 1972, p. 11.

54. Jain, Ajit Prasad (Chairman, U. P. Police Commission, 19 0) 'What Ails the U. P. Police, Hindustan Times, July 1, 1973, and Misra, S.C. : Police Administration in India, Op.Cit., p. 259.

processes of Evidence Act, bail system, defence by counsels to be hired from the open market, prosecution formalities are all there.[55] Even the senior most Police officials are distrusted.[56] The Police, the magistracy, the courts and the jails, suffer from a lack of coordinate administration and in vying with each other the criminals get scot free, justice delayed and the procedures of law subverted by those in authority. The out-moded traditional system, which has its rationale in the rule of law and the distrusted Police and the independent court systems of the country finds itself increasingly redundant and impotent to deal with the real professional criminals in politics and society.[57] Wherever it succeeds, the nature of the soft state comes in and all kinds of criminals are condoned because they happen to know somebody, who matters in politics as well as in administration.

III

Now let us ask the question, should developing societies keep the dichotomy alive or devise some workable method to link these administrations of Law and Order ? Perhaps the ideal situation is where the law changes faster than the social

---

55. Krishnamurthy K. : Police : Diaries, Statements, Reports, Investigation, Prosecution, Identification, Interrogation, Discipline and Duties of Police Officers, Law Publishers, Allahabad, 1966.

56. Prof, Bayley finds : "Police are still widely and deeply distrusted. The Collector is a visible promise to the public." (p. 355). But his survey conclusions demonstrate that "Collectors do not enjoy the prestige they think. People do not think of the Collector as a ready source of impartiality, but instead do not consider him much at all.....The Collector becomes more important in peoples' minds....., while they would still go first to a police official, especially the Superintendent—they would go next to the Collector. Police and Political Development in India, Op. Cit. pp. 357.

57. See Schafer, S. : Concept of the Political Criminal. Journal of Criminal Law, Criminology and Police Science, Vol. 62, September, 1972, P. 380.

system and order is validly accepted as objective law enforcement by legitimate authority. In the developed world the dichotomy has become somewhat irrelevant, because of a highly developed consensus about basic values. Yet the ideological and attitudinal value systems of the volatile minorities rock these societies also quite violently.[58] Frequent changes in law or adoption of newer techniques of administration can accomplish very little in this situation. But, in India the crises in the realms of law and order are significantly of a different nature. They are generally caused by :—

(a) Popular frustrations of mounting numbers

(b) Discretionary administration in the areas of economic scarcity

(c) The rigid and closed class and caste structure of the Indian Society and

(d) The widening chasm between political and economic development of last 20 years.

All these reasons along with a host of others[59] put the administration of order in the dock, which as a privileged group of the society looks after the deprived and unfortunately regards them as depraved. It is attitudinally harsh with the innocent, if he comes from the lower strata of

---

58. See Wilson O.W. : Police Administration, McGraw-Hill, Book Comp., New York, 1963, in passim.

59. Mr. Misra, S.C., in his book 'Pollce Administration in India' (Op. Cit.) enumerates these causes as under :
"The causes of these national aberrations are more deepseated and serious.....Soaring prices, general scarcity of consumer goods,..... inflation, unemployment....., spread of education.....degeneration and absence of moral values.....corruption at all levels, irresponsiblity of political parties..... avowed lack of faith in democratic processes all go to make for the chaotic conditions prevailing in the country." p. 230.

society. Conversely, it is quite friendly and sympathetic with the corrupt aristocracy to which it belongs.

Placed as we are, can something be done to evolve the new patterns of law and order with minimum of dislocation or disorder ? The issue has two facets : 1. a new philosophy of law and 2. a new technique of order. The two can be yoked into an alliance. The politicians, the magistrates, the Policemen and the people need to be trained in this new philosophy and simulteneously, an integral professional machinery of order[60] may be devised to take care of those who want to take to law-breaking as a political profession. According to this new philosophy of law, the administrators should be taught and told that law-makers need a gainful exposure to disorders and the limits of law need to be respected by both; the Law-makers as well as the Law-breakers. The concept of law in developing societies like India has to be that of a 'Shock absorber'[61] and if the law continues to act as a cushion to insulate the rulers from the onslaught of the opposition of the ruled, it is a law in transition. The law in order to be sacred and magestic anywhere has to be flexible and innovative. In India, it has to be competent to handle varieties of disorders, and its firmness and uniformity have to be stressed when it comes to its application or enforcement. As an instrument of change, it has to be cohesive as well as judicious. It

---

60. Rao, K.V. : A note on the Managerial Approach and Police Organisation, Journal of the Society for the Study of State Governments, Varanasi, July-Dec., 1972, pp. 202-5.

61. Some of the representative definitions supporting this concept of law are : "Right law is natural law with variable contents." (Stammler). "Law is the expression of one of the many judgements of value which we human beings make by virtue of our disposition and nature." (Krabbe). "No law save a good law is entitled to obedience." (H.J. Laski).
For details, refer to Stammler, The Theory of Justice, New York, 1925; Krabbe H.; The Theory of Sovereignty of Laws, Laski, Studies in Law and Politics, Kohler, Philosophy of Law, 1914. Jhering, Law as a Means to an end. Boston, 1913.

should reflect more than the mere wishes of its authors. Till our Parliaments become really representative and the society enters into a new phase of egalitarianism, to talk of sacred laws and their objective enforcement seem like contradictions in terms. Democratic formalism cannot continue to perpetrate democratic deception on a wholesale scale. Hence, the rigid, static, omnipotent and sanctimonious notions of law need change-oriented revisions by the administrators. If the political masters feel fettered by the constraints of politico-economic backwardness, it all the more impinges a heavier responsibility upon the administrators as advisers to induct and orient policies in new needs of social change. On the basis of their practical experience in change detection and change pressures.

It can be facilitated by creating statutory and organisational arrangements for law revision. The Ruling Masters and the Opposition leaders who often clash on the floors of the legislatures must sit down with the administrators of order on a partnership basis in committee situations. It is a truism to say that where law cannot take care of the people, the people, tend to take the law in their own hands. Popular representatives may know this dictum, but they are liable to ignore its implications when it comes to its brass tacks implementation. Hence, some kind of staff organisation devised for the effective participation of Policemen, magistrates and Jail officials in the early stages of drafting of law can reduce the chances of increasing obsolescence of the law and its senseless contempt by the rulers and the ruled, and that too more often than not simultaneously. It is a better arrangement than the demand of nominating a few retired Civil and Police officials in the Upper Houses of the legislatures. Moreover, it does not violate the legislative sovereignty of the elected bodies. The staff organisation attached to the Cabinet Secretariat or Law Department can yield an added advantage of invoking professional commitment of bureacraucy for which the politicians have recently raised the bogey.

Once the law becomes dynamic and non-oppressive the ball will exclusively be in the court of the administrators. To defend the Majesty of such a representative and just law the administrative organisation of order has to be an integrated and coordinated machine which can be pressed into service during emergencies. The present system of dyarchy of Civil Magistrates and Executive Police[62] combating riots and violent agitations is based on the philosophy of colonial police and whiteman magistracy. The theoritical justification of civil supremacy and magisterial objectivity is a symbol of positive distrust in Police and the negative philosophy of the profession which very few self-respecting policemen will subscribe to.[63] It has further resulted in the recruitment of a second rate police, unresponsive and unsympathetic to national aspirations and still less representative of the society, which it seeks to serve.[64] Law and Order being the responsibility of a generalist magistrate, the Police organisation has failed to gear its potential in requisite specialisms. Its training orientations continue to be in muscle building and readings of some out-dated Blue books [65] Its colonial and present image circumscribed by organisational and procedural constraints does not enable it to become a plan-subject of our developmental politics. Deprived of its due budgets,

62. See Sections 107-10 of the Code of Criminal Procedure in India. For a forceful presentation of the Police point of view against Civilian supremacy, see the note of dissent to the West Bengal Police Commission by H.N. Sircar, pp. 273-80.

63. Recently, some senior Police officials have been candid about it. See Sinha M.K. (Ex-I.G.P., Bihar) Police in India : The Future, The Indian Police Journal, 1961, pp. 98-99.

64. For an excellent discussion on "What Police do ?" (pp. 16-22) "How Police do it ?" (pp. 23-25) and "What the Police are ?" (pp. 25-26) in India, See Police and Political Development in India (Op. Cit.)

65. Singhvi, G.C. : Police Training Perspectives, C.B.I. Bulletin, Vol. VI, Sept. 1972, p. 4. Also see, Feeney, F., Teaching Law to the Police Officers, Police, Vol XVI. Jan., 1972, p. 25.

it lacks fund-support for research in policy planning and modernisation of equipments. To be precise, the administration of law and order in order to be revamped must be reorganised or restructured on the basis of the following principles :—

1. A representative and responsible citizen police with a positive philosophy of democratic commitment and social justice.
2. An organically structured machinery of single integrated Police with varying needs of functional specialisms and overall accountability to the higher law of the land.
3. A coordinated administration permitting autonomy at all levels within the framework of law stressing upon the unity of command and action.
4. A research and staff supported organisation shaping policy planning and modernising its equipments and techniques to handle fresh waves of disorder.
5. A trained cadre of Police, with effective orientations in poverty, violence and deprivations to identify itself with the main stream of national life and not get swayed by traditional modes or politics of vested interests.

A detailed blue-print for the organisation, personnel and procedures of Law and Order Administration can be prepared on the said lines with its local and national dimensions. It has to be diverse and should leave room for experiment. Modernisation of Police equipment and research in policy planning and techniques of conforntation including some training programmes have recently begun in India.[66] Their increasing impact will be experienced in near future. But the nucleus reform based on (1) positive police philosophy and (2) autonomous police

66. See Report of Hooja Committee on Police Reforms in India. Ministry of Home, Government of India, New Delhi, 1972.

structures needs to be accepted in principle. The incompatibility of the Dyarchical order in Law and Order Administration with the cadres of self-respecting and responsible police force have to be recognised. Obviously, the Indian Law books need to be re-written, if the reforms about the withdrawal or new roles of magistracy are to be hazarded.

Peripheral reforms always help temporarily in continuing with the system, till basic problems exhaust them over. In developing countries serious reforms are not possible without serious risks and heavy prices. But if these reforms are not to be adventured just because they are new or they invite radical risks in the perception of those, who tend to lose by such reforms then disorder and chaos are the prices a society should be willing to pay for its elitism and formalism. The revision of law and the establishment of order, after all, are sensitive and delicate exercises in striking a balance between freedom and control, permissiveness and authoritarianism, public agitation and public resignation and violence and order. The policy has to be a truce between competiting claimants. Obviously, it will be a product of tension and uneasiness. The students and the custodians of law and order must not expect it to be delivered otherwise.

Administration Of Law And Order

V. N. Rajan

Conceptually speaking the modern State is a complex of rulers and ruled, politically evolved, territorially organised and seeking by the conferment of powers upon the former the effective maximisation of the social and individual welfare of the latter. At least that is what every modern democratic State professes to be. In the process of achieving its aim it has to function in a governmental frame-work. The administration of law and order is but the projection in an encapsulated form into the governmental frame-work of what is fundamentally a political problem—the reconciliation of authority with liberty. Authoritarian governments do not have to face the problem in the way democracies have to, since the former proceed on the presumption that the acquisition, accumulation and use of power are ends in themselves. It is only responsible administrations in democratic set-ups that

are faced with the pressures arising from the claims of limited options and competing compulsions that have to face this problem in an acute form.

II

Democracy is based on the rule of law. Law is the codification of society's accepted common sense. Only by a legal process can the State control the life and activity of the citizen. The unique feature of the rule of law is the equality with which it treats all its citizens.

Order presupposes the existence of peace. It is the sine qua non of all creative, productive and constructive activity. When there is no order, there is confusion and disorder. Let us examine some of the principal factors contributing to disorder in India.

Democratic dissent is a legitimate right of all opposition parties in a non-authoritarian political set up. But there are limits beyond which it should not go. These limits cannot be reduced to writing. They are like the Constitutional Conventions in England where all democratic traditions have taken roots through common sense, a sense of fair-play and a consideration for others. They are undefinable; yet they should be recognised and observed. In their absence the political system will be reduced to a comic opera or worse still, populism and eventual anarchy. Though we pride ourselves in a written Constitution and Parliamentary democracy a'la British mode we have yet to develop and give meaningful content to those unwritten but well-known conventions. What with strikes, agitations, demonstrations, *bundhs*, picketings, *morchas*, *gheraos*, *dharnas*, go slow tactics and work to rule campaigns, for every type of grievance, real or imaginary, on the part of organised segments of the population like students, labour, NGOs, engineers, doctors and so on the unorganised generality of the citizenry is more often than

not held to ransom by society's organised segments. Every political party has its own rag, tag and bob-tail. When a *bundh* is organised by a political party, these elements come to the surface and have a hey-day. If the authorities make preventive arrests of the organisers and scallywags who make life miserable for the man in the street there is a furore in the name of democracy. Yet when there is no such interference the proagitation groups have no hesitation in stopping all traffic on the public road, in burning public and private vehicles which venture out, in stopping even sick persons and pregnant women from going to hospitals, in damaging and looting shops which care to keep their premises open, in ransacking institutions which insist on their legitimate right to continue functioning and so on. If in the process of maintaining a semblance of order and preventing some of these acts of depredation, ihe Police have to use force, then the ballyhoo is against that action and the original issue is all forgotten. The citizens have to stand all this harassment and when any of the depredators involved in the anti-social actions on such days are hauled up before Courts of law, the cases against them are withdrawn as soon as the agitation is over or if they happen to be convicted by the Courts, the sentences are remitted. Nothing hurts the administration of law and order more than such measures which do not subserve even the needs of political expediency. If respect should be inculcated in the popular mind for the maintenance of law and order, the prosecution of such persons who openly commit such violation of the law should be pursued with vigour, the sentences or convictions should be deterrent and there should be no question of any remission of sentence.

Law has close association with order. It has been mentioned by someone in authority that law and order is for man and that man is not for law and order. Nice epigram but not very sensible, for the simple reason that when solutions to sociological problems are sought in a context divorced from law

and order, they will be obtained in an atmosphere of passion and confusion, not of calm thinking. In the absence of orderliness, passion, pride and prejudice will hold sway; sense and sensibility will be at a discount. Such solutions will be impositions, not agreements arrived at by free consent and it will be the aim of those disgruntled by them to upset them. Therein lies the danger, for such solutions create problems worse than the ones they seek to solve. Like dictatorships that follow anarchy, they create a psychosis of stress and strain. Solutions to sociological problems if they should be enduring should find their way to popular acceptance through the channel of consenting minds.

It is precisely such an atmosphere of cool and passionless thinking that labour agitations here have been seeking to destroy. When one of the parties concerned in a dispute between employer and employee, landlord and tenant or capital and labour violates all the commonly accepted canons of social behaviour and brings the whole gamut of forces in its armoury including personal vilifications and unmentionable abuse blared over loudspeakers at the offices and residences of those who have the misfortune to have started and be managing individual enterprises, issues threats of personal physical harm and translates them into practice sometimes, obstructs them from going into their premises of work and getting out in time—all in the name of labour agitation and picketing it necessarily drives the other party to more cantankerous stands. To expect the Police to stand back, adopting "Fabian tactics" under such circumstances when offences defined in the Criminal law of the land are committed amounts to emasculating the Force, bringing in a sense of insecurity in the public mind and compelling a section of the populace to negotiate under duress by denying it the right of protection guaranteed by the Constitution.

The genesis of most of the trouble in labour agitations lies in the following :

Union leadership in order to perpetuate itself by playing on the loyalty of the members should keep up a tempo of activity continually, so much so that success in one demand is but a stepping stone for a fresh demand. Besides, in practically every factory, industry and plantation there is a multiplicity of unions with different political orientation. In the context of perpetual rivalry between the unions, concerted action by all the unions is a rarity. Instead, competitive bids to capture the loyalties of labourers are made by individual unions on their own. When one union succeeds in getting its demands granted, it is a signal for the others to launch action-not necessarily to rectify a wrong or to redress a genuine grievance but just to score a point and to get even with the former. Otherwise, all will join the victor's band waggon. If it fails, according to the law of the survival of the fittest it goes down. This it cannot afford for everyone has an eye on the next election. Sauce for the gander is sauce for the goose. When one of the unions transgresses the existing Criminal law and gets away with it, it is to the discredit of the other unions if they do not do likewise, for here one is dealing with people who are highly jealous of their rights with no corresponding consciousness of their responsibilities This means that credit is given for out-heroding herod. Thus a penumbra of fear and jealousy engendered by inter-trade union competition bedevils the law and order situation.

Another point to be counted is that when an agitation starts and a strike is launched, there is an emergency. Union funds get depleted in the process of granting subsistence allowance to the jobless union members. First it is in the interests of any union to bring the struggle to a speedy conclusion. Secondly, as the strike gets prolonged the members become more and more impatient and restive and tend to strike out on their own irrespective of the leadership's mandate. In the face of acute competition between rival unions, the leadership dare not enforce discipline: it necessarily acquiesces in

the doings and misdoings of the rank and file and we see the peculiar sight of the followers leading the leaders by the nose. There is only one solution to the morass on the trade union front—it is to de-link politics from trade unionism and prevent political personalities from holding positions of power in trade unions. But which political party will listen to this ?

III

The problem of students in the context of the general law and order situation has been exercising the minds of all thinking people for quite sometime. Students consider themselves as privileged segments of society. This is not a sudden development. It is the latest stage (not necessarily the culmination of a series of developments which began in the year 1957 or perhaps even earlier. They have their own organisations. They dabble in politics and thereby are able to pull punches much more than their numerical strength would warrant, in the citadels of power. Academic authorities over the past two decades have been steadily losing their hold over students. Plagued by cliques among their own ranks, they have been fighting a losing battle in respect of the maintenance of discipline among students. The result has been that small groups of students politically indoctrinated by interested elements have come to control students' organisations and the vast silent majority which is unwilling to assert itself just toes the line drawn by these determined few lest it should be branded as black sheep. Concessions allowed have come in for misuse and since political parties and successive governments vie with one another in currying favour with student bodies, one concession has always led to another. Appetite has a knack of feeding on itself. I shall indicate presently how some of these have played into the hands of mischief-mongers.

The first is the free education in schools. Now everyone is entitled to have free education at government cost upto SSLC

irrespective of his (her) age in Kerala State (Other States will catch up with this soon). This has meant that a boy can stay on in school if he wants to, even if he is 23, 24 or 25 years of age. Large numbers of professional mischief-mongers utilise this concession to remain in schools and vitiate the academic atmosphere. They capture students' organisations, sway them to their will and utilise academic precincts for non-academic pursuits. They foment agitations, seek and largely succeed in bringing normal life both in the institutions and in the towns to a stand-still as often as they want. They have no hesitation in exploiting the opportunity offered by the understanding that the forces of law and order shall not enter educational campuses without the consent of the educational authorities concerned. Now this latter understanding has no support in law. The existing criminal law of the land does not differentiate between academic campuses, public roads, trade union offices and railway station platforms. An offence committed at any of these places is not different from that committed elsewhere in the eyes of the law. Nevertheless, by agitational tactics students have been able to extract the concession that Police forces shall not enter academic premises unless they are summoned by the heads of the institutions concerned. I have yet to see an institutional head who summons them in time. The existing arrangement will work smoothly in a fair-weather democracy worked by a society of tolerant and politically sophisticated people with a high degree of civic consciousness. But it is anathema in ours with its degree of intolerence and lackadaisicality and the existence of people who are out to utilise the democratic processes to destroy the existing order. The functioning of such an *imperium in imperio* has worked considerable havoc in the maintenance of law and order wherever students are involved. Those who are in a position to know will vouch for the fact that subversive elements have infiltrated into the campuses of educational institutions with a view to contriving and manipulating situations which will turn the student bodies against the

Government and ifs executive arm, the Police.

Listed below are some of the measures that will help restore normalcy and sanity:

(i) Free education is a privilege, not a right. It is fair that a developing society should extend that privilege to the weaker segments of the population. But commensurate with such privilege should be a sense of responsibility to the State without which the question of enjoying any privilege does not arise. Now, that desirable nexus between privilege and responsibility is lacking. The privilege—responsibility hiatus has to be bridged quickly. The first suggestion to meet this is: let the concession of free education upto a standard be altered to one of free education subject to an age restriction. The free education concession should not be available to any student who remains in school after he is 15 years of age. Any student who remains after his 15th year should be made to pay a fee.

(ii) The so called sanctity of an educational campus is a medieval, not a modern concept. President Levi of Chicago University and Milton Friedman, a noted authority on education in the United States recently held that whatever the desirability of avoiding outside force inside campuses, it is becoming increasingly clear how ineffective University disciplines are for dealing with offences such as trespass, destruction of University property, interference with the civil rights of law-abiding students, pilferage of chemicals and so on. We in india have concrete proof of chemicals from University laboratories being used in Naxalite offences. When Vice-Chancellors fight shy of calling in the Police at the appropriate time, their heads start rolling as at Jadavpur two years ago. After all, the educational authorities are ill-trained and ill-equipped for the job of maintaining law and order. For them to turn themselves into Police officers inside University or College campuses, force themselves into student mobs, get fellow professors to identify the participants in

hostile acts, pass out summons and then use expunction or expulsion would amount to treating political extremism like Bonnie and Clyde romanticism. Universities should rely on civil authorities to protect them from coercion from other people whether that coercion takes the form of seizure of property, interference with the civil rights of other students or faculty members or other offences listed as crimes under the law of the land. If this distinction between the proper domain of an educational institution and the civil authorities is widely accepted by educational faculties and Governments, it will be possible to nip incipient disruptions in the bud by calling in the Police in time. Indeed if it is known that the Police will come, there may arise no need to summon them. As it is we have the worst of all the worlds. Time and again unwillingness to have the Police on educational premises has permitted disruption to escalate to a scale that has made massive use of force and violence inevitable and Police are finally called in. It should be made quite clear that students who commit offences on the public roads and seek the protection of colleges and schools when chased by the forces of law and order will not be afforded any protection by the educational authorities. Governments should not fight shy of governing and governance in turbulent times cannot be done by kid-glove methods.

(iii) The concession of half ticket given to students on public transport vehicles should not be available to them after their 15th year.

(iv) Any student who is found guilty of the violation of law or academic discipline should have all the concessions enjoyed by him immediately withdrawn.

IV

The communal psychosis is another factor exacerbating the law and order situation. Communalism is a politico-economic phenomenon and is not purely religious as is commonly

thougth now. Though it is an oversimplification of sorts it is not wide of the mark to say that economic compulsions generate communal conflict and that religious, cultural or ideological idiom which is employed to project these conflicts is a mere expression of the more basic cleavages. Recent happenings in Delhi, Ahmedabad and Poona underscore this point. The *bundh* organised by leftist parties recently in Poona degenerated into communal conflict. The fast changing political scene in the country has forced communal parties to evolve new strategies for survial.

The root cause of the breaking out of serious disturbances as a result of any minor incident has been found to be the mistrust existing between the two communities since 1947 when the partition of the country took place. All efforts have to be made to remove this mistrust. What the efforts should be is for the political and social parties to evolve. Genuine improvement of the relation between Pakistan and India may go a long way in allaying the apprehensions born out of mistrust and ultimately in removing the mistrust. It is the exhibition of sympathy or preference for Pakistan which is responsible for keeping the distrust alive, even though the persons expressing it may be only a small fraction of the Muslim population. So long as such activities even of a few are there, distrust is bound to exist.

A view has been expressed that communal parties should be banned. But this is found to be faced with difficulties, objective and subjective. The decision to declare a party communal and to ban it necessarily has to be taken by the political party in power and the decision may not be fair. What type of communal organisation is to be banned would require a careful consideration. Communal organisations merely constituted for the social or cultural or economic improvement of their communities may not be banned constitutionally. Communal organisations inciting ill-will or hatred

against other communities could be considered as of a different category.

It may be helpful if text books in schools contained matters relating to all religions and mythology, referring to all great men and religious leaders of all the communities. Matters should be so presented as not to be a propaganda for any particular religious faith. Similarly, history books should lay particular stress on facts relating to the unifying and good acts of previous rulers and administrators and should refer to unfavourable acts only objectively. In other words, no such fact be presented in a manner as to create disharmony among different sections of the people. Of course, history has to present, in a comprehensive manner, facts as they took place. The history of the national struggle against the British should have reference to the contributions and sacrifices of the members of the various communities.

Firm legal action should be taken against the persons acting in a manner likely to create ill-will or harted between the communities. Such cases once sent to Court should not be withdrawn on any plea.

It is sometimes true that adequate intelligence and prompt precautionary measures on the part of the authorities in charge of the law and order can stop communal troubles. But it is not always the case. It is a misfortune of the authorities that riots mostly do take place in spite of the best precautions taken. Some suggestions in this connection are the following:—

(i) unofficial inquiries by leaders of communal parties should not be permitted to be held on communal riots;

(ii) no bargains should be made to get votes from any communal organisation or people;

(iii) political parties should change their attitude in approaching the people for their gain, especially at elections; they

should not exploit communal or caste feelings for their purposes and no political, economic or cultural issues should be discussed or agitated on from a purely communal angle, as communal harmony should be taken to be too sacred to be tampered for mere political gain;

(iv) all persons irrespective of their caste, creed, colour and position having directly or indirectly a hand in the riot, should be brought to book and the guilty people should be dealt with with a heavy hand;

(v) secular policy of government should be faithfully implemented, though persons from each community put it differently. For the Muslims it is said that the impression that they are second grade citizens should be wiped off. For the Hindus, it is said that ths Mohammedans should not be given undue advantages by the administration on the ground that they are a minority community, government should not adopt an appeasing policy towards them, no favouritism should be shown to anyone and both the communities should get an equal and fair deal. The action of the authorities should, therefore, be such that its fairness and justice cannot be open to question;

(vi) the question of deterrent punishment to the accused in communal riots should be considered by introducing one or two sections in the Indian Penal Code;

(vii) a special sub-section may be introduced in section 110 Cr PC to deal with the instigators of communal situation and tension as it is not possible to resort to section 153 A of the Indian Penal Code against inflamatory speeches couched in guarded words. Repeated writings and utterances considered as a whole could be used for taking action under section 110 Cr PC;

(viii) collective fines should be imposed at all places where communal riots occur and punitive police be also posted in such areas; and

(ix) some compensation should be paid to the victims of the riots.

V

Prevention and detection of crime and bringing professional offenders to book are some of the chief functions of any law and order machinery.

The modern emphasis in all policing in general and investigations in particular the world over is on the brain as against the brawn. Conferences, seminars, symposia and other meetings galore repeatedly stress the need for scientific approach and orientation in investigations. In former times investigating officers used to search traditionally for finger prints, foot prints, blood stains and weapons. For want of facilities of examination other materials like dust, debris, fibres, hair, soil, tool marks, paint flakes and so on never used to be searched for.

With the opening up of Forensic Science Laboratories all over the country with facilities available for examining various materials the picture has changed substantially. All new recruits to the carde of Sub-Inspectors of Police are given instructions in Scientific Aids in Investigation as part of their initial curricula of training. The working of the Forensic Science Laboratories is demonostrated to them in a practical way and special lectures are delivered by the experts of the Laboratories. Besides, orientation courses in Scientific Aids to Investigation are arranged at periodical intervals for selected Station House Officers and the scientists in the Laboratory who conduct these course simulate crime scenes, make the trainees search and locate physical evidence available at such scenes, discuss with them the utility of such materials and certify at the end of every course that the assimilation of the instructions by the trainees is satisfactory.

Scientific Aids form part of the competitions at State and

All India Police Duty Meets. Quarterly seminars on Scientific Crime Investigation are held at district levels attended by investigating officers and presided over by Superintendents of Police. The Crime Branch CID is closely associated with such seminars. Selected investigating officers are sent to Central Detective Schools in Hyderabad and Calcutta for more specialised training.

But do all these efforts bear the fruit they are intended to bear ? A vast majority of the investigation officers fail to collect non-traditional clue materials for analysis at the laboratory. Scientists of the Forensic Science Laboratory complain that materials like glass fragments, point flakes, soil, tool marks, fibres, hair, paper etc. are not being received in the laboratory. What could be the reason for this general indifference to Scientific Orientation in Crime investigation ? Collecting clue materials in the proper way, sending them to the Forensic Science Laboratory, getting expert reports and adducing evidence based on them in courts of law involve labour and time. The feeling that probably time should be saved in disposing of a case without expert help from the Forensic Science Laboratory (depending on the availability or oral testimony and other evidence) is said to be one of the reasons for this notable lacuna in the investigation machinery. Another disincentive appears to be the preference given by courts to oral evidence which is always direct as against scientific evidence which by its very nature is indirect. Given the insulation of the magistracy from all modernistic trends, the assumption that if a case is presented relying exclusively on scientific evidence it may end up in acquittal does not appear to be far-fetched.

An instance reported by a Professor of Forensic Medicine is topical in this connection. 'Superimposition is one of the modern techniques employed for establishing the identity of skeletons. Materials required for the study are the disputed skull and the photograph of the missing person. The method

used is photography. The face of the missing person is brought to life size and photographed on a transparent film. A real size photograph of the skull is taken on another transparent film. These two are placed one over the other and viewed in transmitted light. If the skull belonged to the missing person, all the anatomical landmarks of the skull and face will correspond with each other.

It is very unlikely that a skull other than that of the deceased will fit in with all the points on his face. In its own right, the evidentiary value of this technique is rated as "highly probable". Taken along with other medical and circumstantial evidence, the photographic superimposition technique affords a certain means of establishing that the skull belonged to the missing person indicated in the photograph.

There are two important difficulties to be overcome in applying this technique. One is to enlarge the face of the deceased in the photograph to its exact life size. Some suitable reference object has to be found for this purpose. In one case a wooden chair on which the deceased was sitting was taken as the reference object. The wooden chair itself was recovered from the work-spot where the deceased used to be employed and measurements were taken of the breadth of the left front leg and front cross bar of the chair. The photographic images of these parts of the chair were enlarged to such an extent that they tallied exactly with the measurements of the original. With the enlarger fixed in this position, all parts of the photograph including the face would give a life size image. The other difficulty was to photograph the skull in the same plane and tilt as those of the face in the photograph. A 3-way rotating metal stand was specially made for this purpose and skull fixed in the required plane and inclination.

The work was extremely difficult requiring precision and

accuracy. A lot of trial and error was involved before finalising the photographs for superimposition. The whole work extended over a period of one month and was done with meticulous care. The final outcome of this work was very satisfactory. The case came for trial. Since the technique was applied for the first time some degree of curiosity and excitement were expected on the part of counsel and court. On the other hand our experience was rather disheartening. The counsel for prosecution did not show any interest in this new type of scientific evidence. Asked whether it would not be useful the reply was that the prosecution was concerned only with "extrajudicial confession" and "recovery" under Section 27 Evidence Act. If the court could be persuaded to believe the evidence arising from these two sources, conviction was certain. Otherwise, the accused would be acquitted. Hence this scientific evidence did not make any difference to the prosecutor. During examination-in-chief the photographic productions were casually introduced in evidence. Neither the prosecutor, nor the Judge asked for a demonstration. They are treated as just any other document of pieces of paper put into evidence. The counsel for the defence tried the usual tricks of discrediting the evidence by pointing out discrepancies which were apparent rather than real and also by reading citations from books which were out of context. The prosecution failed to elicit clarification of these points by questioning the expert witness. The overall effect was that of a wet blanket.

Initially some of the cases sought to be proved on such scientific evidence may go unproved but in due course the courts will start appreciating the objectivity and reliability of such evidence compared to the oral evidence of persons with emotional involvement in the cases. Here the supervising officers have to play a much more significant role. The responsibility to chargesheet cases relying mostly on scientific evidence must be taken by them to eradicate the fear of consequence of failure from the minds of investigating

officers. Whatever educational programmes or supervising techniques are devised, it remains that the investigating officers alone can improve the situation. A system of incentive rewards should be introduced at district, state and national levels and a few best investigating officers could be rewarded on the basis of their performance in relation to use of non-traditional scientific aids, irrespective of the outcome of such cases in courts of law.

We can't afford to wait for geological time before modernising our medico-legal machinery. Time is running fast and in the process much of the investment on the collection of scientific evidence is going to waste in the absence of its proper utilisation, presentation and appreciation. A magistracy and prosecuting agency attuned to a nineteenth century wave-length of legal approach and thinking bog down in the result whatever progress is achieved in modernising investigative methods. The only solution to this is to streamline curricula in law colleges and expand them to include basic principles of subjects like forensic science. systems analysis, operations research, computer technology, audio-visul aid, identification of sound, electronics and photography. In the United Kingdom and some other countries there are medico-legal societies which enable investigators, prosecutors, magistrates, judges and forensic scientists to come into informal contact with one another, get exposed to modern trends in medico-legal thinking and extricate themselves from anti-diluvian grooves of thought. Why shouldn't we too have such methods of exposure of all concerned in this country ?

VI

The entire criminal prosecution machinery needs overhauling. Discharges and acquittals arising from poor prosecution are numerous during recent years. The appoinment of prosecutors at the district and sub-district levels has to be on the basis of professional competence and not on other

considerations. With the emoluments now offered, competent lawyers are not willing to take up assignments of Assistant Public Prosecutors who are the mainstay of prosecution work in the Sub Magistrates' and Sub-Divisional Magistrates' courts. Those emoluments should be enhanced considerably. Besides, prosecutors should be made answerable to Superintendents of Police/Commissioners of Police instead of to District Collectors. Finally, with the mounting pressure of law and order problems and security arrangements for VIPs with which Station House Officers and their superiors are saddled, eventually it will be necessary to divert more and more of investigations from them to specialised agencies like the Crime Branch CID which are uncluttered with the responsibility of having to face agitations, *gheraos*, *bundhs*, *dharnas*, *morchas* and so on. That would mean perspective planning and reorganisation of the entire Police department and a new officer-constabulary ratio with much larger direct recruitment of youngmen to the rank of Sub Inspectors and the eventual evolvement of what will be mostly an officer-oriented organisation to deal with crimes and a manpower-oriented organisation like the French riot Police to deal with disorder.

VII

The public relations syndrome pervades all activity in the modern era. No organisation, governmental or otherwise, can survive without the support of favourable public opinion. Hence all the clamour for public relations and image-building. Here self-deception is easy and practised. Quite a few top-ranking administrators are capable of mistaking image for performance and shadow for substance. To some who miss the wood for the trees the appointment of a Public Relations Officer is enough as far as public relations are concerned. In the administration of law and order, the customers are the public and the proof of the pudding lies in their eating. If peace is maintained, if crimes are prevented and those that

cannot be prevented are detected, if politeness is shown to those who visit police stations and connnected offices on business, if traffic is regulated—all to a reasonable degree of efficiency and if there is demonstrable honesty in the service, public relations will automatically be boosted without one having to clamour for it.

VIII

In the context of the administration of law and order the worst kind of lawlessness is that committed by law-enforcement agencies. Official high handedness, criminality and corruption come under this category. Human nature, being what it is, no society—least of all an acquisitive society like ours—is capable of obliterating these evils. But a healthy fear of the strong arm of the law can be infused in everyone by the strict and impartial administration of the existing laws and orders governing discipline.

It is in the field of discipline that we find gaping chinks in our armour as a nation. Except in times of grave national emergency we appear to be incapable of disciplining ourselves. Discipline does not descend on a people as manna from heaven. It has to be cultivated through a realisation that everyone cannot have everything he wants but each has to make a sacrifice in order to make the life of others tolerable, if not pleasant. Besides, discipline is an integrated phenomenon. A nation cannot have patches of discipline in a desert of indiscipline. When employees of Railways, Electricity Boards, State Transport and other public and private sector undertakings, non-gazetted and gazetted officials and various other segments of society have the liberty to organise themselves into trade unions, indulge in collective bargaining to get a greater and greater share of the national cake, commit acts of sabotage and rank rowdyism all in the name of the rights of collective bargaining and are permitted to get away with it, it is pure moonshine to expect policemen who do not have the freedom

to organise themselves to sit back smugly wallowing in self-pity. Storm signals of their discontent have already manifested themselves in one of the Northern States. Discipline has not eroded to that extent in South India. Yet things are very far from what they should be. No uniformed organisation can be permitted to do collective bargaining; nor can they be permitted to organise into trade unions. It is essential that any lawlessness on their part should be eradicated ruthlessly A two pronged drive is essential to achieve that end. First of all, a machinery should be institutionalised for Police Officers and the constabulary to ventilate their genuine grievances and get them redressed. The habit of bracketing the constabulary with Class IV government servants for purposes of emoluments and status should stop forthwith. Government and people should start treating them better. Secondly, the erring ones among them should be deterrently dealt with.

IX

Corruption is the bane of the modern world. It is a sine qua non of an acquisitive society. Agencies in charge of the enforcement of law and order are no exception. Forms of corruption are almost infinite. It is not possible to deal with the problem in depth here owing to exiguity of space. Exacting a price for doing something, for not doing something, for maintaining goodwill and for speedy execution of a correct order—all this is possible and practised. Forms of corruption vary. A superior officer may receive lavish gift on the marriage of his daughter; a Head Constable may extort money from vendors who do not have necessary permits. The most repugnant form of corruption concerns misconduct in enforcing the Criminal Law. There are innumerable ways in which an investigating officer can twist an investigation and turn guilt into innocence and vice versa. Quite often corruption involves offences in which the enforcement agency has great discretion—like prohibition, gambling, prostitution, drugs, smuggling and so on. The inter-state and inter-district movement of foodgrains and motor

traffic afford lucrative pastures for unprincipled officers. Supervising officers contribute to corruption by the manner in which they accept "hospitality" from subordinates when on tour.

All the well-meant activities of Vigilance Commissions, Special Police Establishments, Lokpal, Lok Ayuktha and other anti-corruption agencies notwithstanding, the merry-go-round goes on. Their work is handicapped by the need to adhere to cumbersome procedure laid down to drive home guilt and mete out punishment and collusion between the bribe-giver and bribe-taker which makes evidence tardy. The Santhanam Commitee strongly recommended simplifying departmental proceedings against corrupt officers. The committee has rightly held that the protection given to the services in India is greater than that available in the most advanced countries and is a major contributory factor for the growth of corruption. Basically there are two areas where anti-corruption work can be fruitfully done. First of all, the public should be encouraged to report any solicitation of bribe or payment and should be willing to meet the inconveniences involved in becoming witnesses for honesty in public life. This pre-supposes the cleansing of all public life in general of the prevalent dishonesty and the full implementation of the Santhanam Committee report in respect of publicmen. Secondly, the rules for dismissal and other punishments should be weighted more heavily on the side of ridding Governments of its dishonest officialdom and less on the side of iron-clad service security.

X

Law and order is a state subject. The Home Minister is the final authority in the state laying down policy, subject, of course, to cabinet approval. He is responsible to the legislature in all matters covering law and order. In executing his policy, the Home Minister is served by a vast Police organisation of which an Inspector-General is the executive and administrative

head. Interposed in between these two authorities is the Home Secretary, a legacy of the Colonial British administration. No modern Government elsewhere in the world entertains such a functionary in between the political executive who is the policy-framing authority answerable to an elected assembly and the top executive official who translates the Minister's policy into practical administration. It is topical in this context to recall the principle of "accountable management" so eloquently laid down by the Fulton Committee on Public Administration in the United Kingdom. Accountable management in essence is "holding individuals and units responsible for performance measured as objectively as possible." The Home Secretary is not responsible to the elected legislature, nor is he a member of it. He is certainly not responsible for the administration of the Police Force. When there is large-scale indiscipline in the Force he is not questioned. When crimes go up and investigations flop, he is in no way affected. When riots are mishandled, he is not answerable. For answering any interpellation in the Legislative Assembly regarding law and order or the Police he has to refer to the Inspector-General of Police or one of the latter's subordinates. Yet every paper of importance that goes to the Home Minister passes through the Home Secretary who thus comes to have a decisive say in the formulation of policy. He sits on all important Departmental Promotion Committees and he has a say in the promotion of several ranks of officers in the Police Department (who thus come to find in him an alternative focus of authority outside the Force), though his knowledge of their work is by no means direct and is governed by his reading of the confidential reports on them written by the Inspector General of Police and his executive subordinates. Here is a typical instance of power divorced from functional responsibility. If he agrees with any proposal submitted by the Inspector General of Police to the Home Minister he is redundant. If he disagrees he becomes obnoxious. His principal contribution to the administration of law and order is dispersion of responsibility, procrastination

and delay. It is a parody on the vagaries of the professions and practices of those in power in India during the last quarter century that no perspective planning has ever touched even the fringe of this fossilised administrative system. The earlier it is dispensed with, the better and quicker will the wheels of law and order administration move. The panjandrums of the administration who have a stranglehold over the policy-making Ministers in the Secretariat will look askance at this suggestion. No one who has once tasted power will surrender it without a fight. Yet that reform should be undertaken. The post of Home Secretary should be abolished and the Inspectot General of Police should become ex-officio Home Secretary. Such a functional re-orientation of the law and order administrative machinery with a view to providing the necessary nexus between power and responsibility is very much called for.

There is the simultaneous need to sweep away the cob-webs in the district administration of law and order. It is high time we dispensed with the paternalistic concept of the District Collector or Deputy Commissioner vis-a-vis law and order. The Collector's functions now are primarily those of a leader and co-ordinator of development programmes. His functions as an executive magistrate are best discharged under the specific provisions of the Criminal Procedure Code and the Police Act for the preservation of the peace. In regard to these no supplementary provision for "general control or direction" is necessary.

With the democratic processes developed fully in India, the responsibilities of the Police and the manner in which these responsibilities are to be discharged, have also undergone basic changes. The Police organisation and operations have become specialised to an extent that requires adequate understanding and experience of these, if any worthwhile direction and control are to be exercised over them. Moreover, in present day administration, it is the Superintendent of Police and the higher supervisory officers of the Police Department who are

considered accountable for failures of the Police. The provision for general control and direction in Section 4 of the Police Act cannot in fairness, and does not in practice, make the District Magistrate responsible for such failures.

It is perhaps strange that such an ambiguity, so unlike the precision which is associated with legal provisions, has remained undisturbed in the Statute Book. Apart from a sense of superiority which has been apparently satisfying to the ego of members of the Administrative Service, and their consequent unwillingness to sponsor or to support any move to rationalise the position by remvoing this contradiction, experienced Police Officers have also found in this provision a useful shield against personal accountability for failures. Police officers, particularly the Inspector General of Police and Deputy Inspectors General of Police, are in the happy position of being free at their discretion to intervene or not to intervene with timely direction and guidance when ticklish situations develop in the district. Where they choose to do so the general control and direction vested in the Collector over the District Police is seldom an obstacle. No District Magistrate will find it safe to obstruct intervention made in support of right causes. However, in a case in which the Deputy Inspector General of Police or the Inspector General of Police does not, for any reason, intervene, even when by doing so they could have made a positive contribution to the proper handling of the situation, they are insulated against accountability for the omission by the existing provision in Section 4 of the Police Act. Duality of control less, and not more.

The Collector does have an important function to perform in the co-ordination of Government activity at the district level. However, "co-ordination" is not synonymous with 'control'. Co-ordination requires no more than a general grasp of requirements, and an ability to bring the participating elements together and to see that they function cheerfully, enthusiastically and efficiently in their allotted spheres for the success of

a common programme. The first need for any one who would successfully co-ordinate is to refrain from throwing his weight about unnecessarily. Co-ordination does not contemplate interference. This must be the basis of the relationship of the Collector with the Police, as with all other executive agencies of the district, which have their own separate departmental hierarchies. The Collector, as the Executive Magistrate of the district, should exercise his functions with regard to law and order within the limits of the authority and responsibility vested in him specifically under the law, and taking due account also of the authority and responsibilities vested in the Police officers and other functionaries.

The combination of the Magisterial, Police, Judicial and Revenue functions in a single controlling authority, which was the sole justification for the retention of this unusual position in India, has become not only unnecessary, but is also acknowledged as undesirable for the fair exercise of the judicial and executive power of the state. The separation of the Judiciary from the Executive is itself made on this basis. It is necessary that the Police in India too should be made independent of the tutelage of the Executive magistracy.

The removal of the clause relating to "general control and direction" over the District Superintendent and Assistant Superintendent of Police by the District Magistrate from Section 4 of the Police Act 1861, instead of detracting in any way from the structure and effectiveness of the Act, will make it reflect more truly the basic purpose of the enactment. The scheme of the Police Act and of the Criminal Procedure Code is that the Police authority should exercise its own judgment, and function in its own right in the spheres assigned to it for investigation, control of crime and preservation of the public peace, just as the Executive and Judicial Magistracy are to do so in their spheres. The Police authority cannot really transfer the responsibility and answerability in any matter assigned to it under the specific provisions of the law, by reason of the

provisions for "general control and direction" by the District Magistrate.

XI

It will not be easy to enforce these suggestions some owing to their political overtones, others because of resistance from vested interests. In some quarters they will have the effect of a cat among the canaries. It will need a strong stable and self confident Government to enforce them. Unless they are enforced things will go from bad to worse. The existing state of affairs is one in which we have plenty of law but precious little order. If that is not to degenerate into all law and no order, this problem will have to be faced squarely sooner or later, better sooner than later.

"CRIME strategies have undergone changes beyond conception and are throwing new challenges every day. This calls for a radical change in our methods of investigation and intelligence work based on science and technology. Added to this are the new techniques of symbolic violation of laws by the high-ups in society for political purposes. There are also organised large scale stay-in-strikes, *morchas*, *bundhs*, *gheraos* etc. They are sometimes led by prominent people in public life for the relations of their political, economic, social and often, personal objectives. In recent times, the law and order agency is to function in very delicate situations. It has often to take on-the-spot decisions of far reaching consequences. Decisions taken with tact and prudence my save situations, while indiscreet acts or inaction may prove to be calamitous, resulting in large-scale damage of life and property. .....The onerous and difficult nature of the work of those engaged in the enforcement of law and order should be recongnised".

(*Quoted from A. R. C. Report of the Study Team on State Level Administration*)

Changing Perspectives of Law and Order Administration

M. L. Sood

The very fact that the question of the Administration of Law and Order is such an open subject of Public Debate shows the dire necessity of systematization in this field. Debates and discussions, on matter, of Public Policy, are the essence of a democracy and these will go on for as long as democracy lasts-but-law and order and its maintenance is what preserves the texture of any modern society and surely every country, whether it be communist, socialist, capitalist or even democratic socialist must have a certain well defined system of ensuring law and order. Every society must have positive built in reflexes for preserving its essence, and, vagueness and uncertainty in this sphere of public policy can be, at worst a fatal weakness, and, at best a very unhappy state of affairs. In other words it can be said that there is a schematic lacuna in the approach to law and order. A very unwanted and dangerous discretion, if one wishes to call it this, or lack

of direction may be a more accurate expression, is given to the persons dealing with such situations. At lower levels of administration the absence of guidlines leads to considerable embarassments because of unwanted innovations by persons dealing with such situations at that level. By the time a senior and experienced officer gets to the spot the direction has already been given to the situation and changing course in midstream is not the easiest of things to achieve.

The Administration of Law & Order—understood in its broadest sense would be impossible to contain in an article like this—because, correctly speaking, right from the uniform of a constable to the decision making level of the I.G. and the Chief Secretary is all Administration of Law and Order. There has, however been some loud and wide thinking on some aspects of this issue and learned and experienced men—sometimes in the form of Commissions—have elaborated, very sensibly and cogently—and at length, on these salient aspects. The general reader, who has interest in this matter will, naturally, be acquainted with these irrefutable and wise conclusions—hence I will be, though certainly mentioning these conclusions—not be dwelling at any length on the basis on which these conclusions have been reached. Thus the number of words devoted to any matter may not be treated as the factor on the basis of which the importance of that matter can be ascertained. I will naturally want to deal in greater detail with aspects and spheres which have some scope for constructive suggestions rather than those that have already been fully thrashed out.

To start with numbers would I think be a sound start. The law and order maintenance is the responsibility of the Magistracy and the Police. The inadequacy of the Police force is a crippling issue. The indequacy of numbers in any other department, say the Irrigation Department, generally results in slow progress of works. Numbers affects expeditious completion or taking up of works but it does not affect

the science behind earthen dams or tank construction. This is the case in practically all spheres but in the police the shortage of police staff has other more fundamental effects. It limits the possibilities that would otherwise be available to one of tackling a certain problem. Putting it more concretely, one can say that in most public Law and order situations the very situation alters because the threatening crowd is clearly aware of the small force available to deal with the situations. In most of such situations the inadequacy is clearly a catalyst that provokes a crowd into taking greater liberties that it would not otherwise have taken i.e. if the police crowd ratio was somewhat higher. The supervising officers are, at the same time, compelled to 'wait and watch' for longer than one otherwise would, and since the initial liberties that a crowd takes go unchecked, it naturally strikes for bigger destruction while the 'wait and watch' continues. The situation actually is very paradoxical indeed because being heavily outnumbered the enforcement agency does not wish to take an ineffective initiative (which might ultimately be looked upon as a provocation) and the more it waits the more difficult it becomes for it to take an initial initiative, and, when bad becomes worse and to take steps becomes inevitable then the initial steps taken are completely out of time with the mood of the mob—and these initial steps, which originally may have proved to be sufficient now look ridiculously inadequate. The mood of the mob realises this inadequacy and this mood continues to stay a step ahead of the corrective measures being taken and hence where there is no other recourse, firing has to be ordered where only an initial but effective *lathi charge* could have succeeded if the police strength was more proportionate to the crowd.

The importance of numbers is equally evident in the investigation of crime. A small *thana* force means the piling of investigations and therefore delayed investigation; delay in investigation is as good as an acquittal and with each such

acquittal an unpunished criminal is either born or reborn into society to plague it with impunity, and, not only this but to become for others an example worth following. Whatever other shortcomings of our investigation techniques, the delayed investigation is the worst of the lot and this occurs because of inadequate staff. Expansion of the Police force is not agreed to because this is an establishment item and the country is more interested in development—but surely—we must realise that for orderly development to take place, and for the fruits of development to be preserved, we must be in a position to protect them.

There are other connected matters like better communications, better arms and ammunition, separation of the investigating set up from the law and order set up, but these points have been convincingly made by many learned men and I merely prefer to mention them as gospel truths.

From this point I would wish to switch over, abruptly perhaps, to the manner of handling public law and order situations. This itself is amenable to infinite debate and the issues involved are numerous but I will be selecting those on which I feel a contribution still needs to be made.

Let us start from a situation where a magistrate is facing a very hostile mob and he has, therefore, while the hostility snowballs, adopted the patent, 'wait and see' policy. He eventually musters enough gumption to do something about all this nonsense. The nonsense is the flying of stones and brickbats, the hurling of bottles, the general melee of urchins and perhaps a couple of cases of looting have also already taken place (the magistrate must permit this to happen otherwise his initiative is in fear of being condemned as a provocation). Observing the current legal proprieties he is now required to 'go on the air' and pick up the mike and make a firm and business like announcement that what the crowd is doing (perhaps more arson and looting now) is quite unbecoming

and in fact may be considered as illegal and since some members of this crowd may be unaware of the fact that all the looting and arson that they are indulging in is not proper conduct in a civilized country, hence, they had better take heed otherwise the lesson would come to them in a harsh manner. He must repeat this announcement to ensure that every one has heard—though no one really has—because they are doing far more exciting things and don't really care what this man with the yellow arm band with 'Magistrate' written all around it is trying to put across. However, with this formality done, or may be even before, some policemen waving their canes can be seen charging towards the crowd. Very soon these very policemen—perhaps one or two fewer than those who initially charged—are seen charging back pursued by a good number of the crowd.

Now, law says that if possible and found suitable use tear gas. Shells are lobbed, but, the few that burst, don't seem to bother anybody very much because the wind has suddenly changed direction and the policemen have tears in their eyes. The stoning and brick batting continues and very soon the realisation dawns on the law enforcement men then that it has become a do or die situation.

Now, law, current law and current procedure, says that before you order firing go on the air again and repeat patiently, clearly and cogently the same instructive phrases to the crowd but with the corollary that continuing naughtiness will lead to firing. No one hears—and perhaps very few say it at all—there is firing.

Now, very briefly, is it not patently absurd to make a magistrate play the role of a radio announcer before, to say the least, an inattentive audience ? Can the law not be changed somewhere ? Can it not be presumed that the citizens of our country know that the law of the country prohibits, with drastic deterrence, arson and looting ? Why is it considered

necessary to try to forewarn an offender when he is blatantly in the very process of committing a very serious offence ? If a person is seen as if he were about to commit murder, is he normally given a period of instructions before he is stopped ? Is a mob ever responsive to such instructions ? Does it really hear the instructions ? How many magistrates actually indulge in such futility and in fact I envy the magistrate who would have enough time to do things in this way as also the crowd which would be willing to listen to what is being said. What about all the fudging that has to take place when the Judiciary Enquiry is on to ensure that the size of the bullet is no bigger than the barrel ? Is there really a need to preserve a formal structure of such antiquity and with such inoperative qualities ? No—I say no, not at all.

If we compare an individual situation with a mob situation we confront the following inescapable logic :

When an individual is detected in an imminent stage of committing a grievous offence, he can be stopped physically and with the use of force, quite without prior intimation but when a mob is already indulging in a scattered series of grievous offences, the mob must be first warned and then warned again before its destructive actions can be interferred with. Can we not and should we not, get rid of these legal anachronisms ? We must at least try to.

As a suggestion I have to offer that instant, unwarned action of the most extreme kind should be permitted—in the first instance if so considered necessary—and the person ordering such action would naturally be expected to fully justify the steps he takes—when the acts of a mob are an obvious threat to life and property. A qualification to this approach will be introduced later. This measure will not only act as a very effective deterrent to a violent mob but will also obviate the awkwardness of having to fit everything into an archaic legal groove once the action is over and the enquiry is on.

Having delved into the sphere of mob control I also wish to say something about another related point—this is the manner in which and the weapons with which firing should be done. To begin with, the present set of regulations, clearly prohibit firing in the air. Inspite of this specific prohibition there are innumerable instances where, through diffidence or wisdom, the magistrate on the spot orders for innocuous firing in the first instance—and strangely enough a number of situations have successfully been resolved by this measure alone. Since not only is the efficacy of this step fairly well established but its use relatively common, it seems necessary to briefly discuss the pros and cons of this measure.

'Effective firing' always is presumably based on the logic that :

(a) Such an extreme step should not be allowed to be taken lightly by making it innocuous firing in the first instance.

(b) Since the crowd has been systematically exposed to less severe treatment earlier on, and, since constant and repeated warnings have left it undeterred and since even this specific intention of resorting to firing has been audibly broadcast to the crowd, there is no need to play games anylonger and order must be preserved by effective firing right away.

What is to be examined is whether the current approach fulfils the requirements on which it is based and whether or not firing in the air can serve these and other ends better.

The first point is related to the second and both need to be considered together. When it is almost an admitted fact that the prescribed formalities and announcements that are supposed to precede the order to fire effectively are hardly ever observed, or if observed in form hardly ever go across cogently to the crowd, then, since these essentials are not really complied with, or if complied with do not serve the

purpose for which they are meant, and, on which the succeeding action is based—in such a state of affairs is it not proper to question the firing action that follows. Since the sequence that is supposed to lead to firing and which will ultimately determine the justification for the firing consists of impracticables or superfluous formalities, the firing itself becomes an unsupported act.

On the other hand let us consider a situation where firing in the air is permitted. This would mean that when a force, with a magistrate, arrives to confront a deteriorating law and order situation they can firstly, quite legitimately abandon the earlier prescribed actions of a *lathi charge*, preceded and followed by announcements, and, if the deterioration of the situation justifies, a couple of rounds can be shot off in the air. Since rifle fire can hardly ever, even in a loud commotion, go unnoticed, these shots, besides heralding the arrival of the law and order agency will also convey, in an instant, to the crowd that it has exceeded all limits, and extreme measures are likely to follow if it continues in its destruction. Surely this is a better, clearer and more effective expression of the assesment and the intentions of the law and order agencies and it has been conveyed without a word being spoken. This thus becomes the qualification or a rider to my suggestion in para 12. Effective fire must be necessarily preceded by firing in the air but not necessarily by the chain of superfluous events that must precede it now.

As I have said, most magistrates, in practice already adopt the 'firing in the air' tactics, but since the persons using the firearms are not drilled in this practice, frequently richochetts and the inadvertent direction given to the bullet, leads to accidental and avoidable injuries and deaths (Perhaps blanks can also be considered for this purpose).

This absence of drill is evident even in the present practice of firing. The men using these arms should be

marksmen, they should be able to pick their targets and for this they should be given extensive practice—particularly of hitting moving objects. They should be completely familiar with the weapons they may be asked to use and it should not be the case of any weapon for any man. The natural human hesitation of shooting at human beings should be countered by comprehensive instructions. Frequently this innate hesitation results in the men shooting too low or too high in the first instance and then unintended injuries result. Thus psychological conditioning is a must. In result, it is necessary to have a well trained and well equipped, with arms and mentally, set of persons who should in all serious situations form the firing line. No random selection based on immediate availability should be substituted and just like the tear gas squad is a supposedly trained unit, similarly, the firing line should consist of men selected specially for this purpose and also thoroughly trained.

The other two open questions are, the selection of the fire arm and where to aim ? It would require a lot of thought and study to arrive at the most suitable conclusion—but this should not deter one from making the effort. A-303 rifle is not necessarily the only weapon for all situations. Could not a. 12 bore gun with buck shot be a better weapon for some situations ? The injuries would be more but the fatalities fewer. The discretion should be left to the magistrate and he should have the option Men armed with two or three different types of weapon could be available and necessary orders could be issued to any group as deemed necessary.

Should the orders be to shoot to kill or to shoot to injure ? and if the latter then which portion of the body should be made the deliberate target ? To direct firing, with instructions to kill, can be justified in only the most extreme circumstances—when the deterioration has gone to such an abysmal level that nothing else will save the situation. It may be found desirable to issue instructions, or if not issue instructions, at

least suggest to the law and order enforcing agency that at times, shooting from a lying position with the weapon firing at the legs may serve the purpose or a standing position with the weapons aiming below hip level could be another alternative. To give a precise direction which would apply necessarily to all situations is certainly not desirable and nor is it possible; but suggesting these alternatives, with a view to successfully achieving the object of dispersal of the mob with as few fatal injuries as possible is certainly something that can and should be done. The overall impression that I am seeking to create is that there is, in the present situation, enormous scope for exploring these fields in detail—in every minute detail. Before the life of a person is taken let us at least be reasonably sure that it is necessary to take that life. I am not implying that such a great degree of precision can possibly be introduced into this subject so as to always ensure that even a scratch or an abrasion is the result of deliberation, but what I am certainly trying to imply is that a certain methodology must be developed, and a consideration of alternatives must be there so that the bonafide attempt always is to cause as little injury as possible.

One last point about riots and its ramifications and that concerns the imposition of curfew. Firstly, it must be clearly realised that the imposition of curfew cannot be considered as a measure of administration—on the contrary it is an open admission of the total failure of administration. By compelling people to stay in doors one admits one's incapacity to administer them. One is also indirectly arranging for a time lag, a period in which new steps to administer can be thought of—reinforcements can be rushed, proper policing can be arranged and certainly also the undesirables who were elusive without the curfew, may now come within reach during the curfew.

The moot point that I wish to elaborate upon is about the timing of a curfew and the necessary time span required to impose one. It is sometimes felt that in a rapidly deteriorating

law and order situation, when all preliminary steps have been taken in vain, the announcement of the imposition of curfew is the last such step in this sequence and if the crowd does not exhibit features of immediate compliance then the fiercest of steps may be justifiably taken by the law and order enforcement agency. There are concrete instances where firing, resorted to soon after the announcement of a curfew, is frequently sought to be justified on the ground that the crowd or mob failed to respect such imposition. To place such a situation in its proper perspective it is necessary to visualise what the actual State of affairs could be in any such case. An unruly crowd, reaching a peak of defiance because of 'wait and see' tactics and the inefficacy of a completely out of step and out of date handling sequence, is suddenly told, after a short burst of fire, that curfew is imposed. In all likelihood, given the din and noise and the natural concomitant confusion it would take a good half hour at least before all those in the mob can fully comprehend what exactly has been ordered and how they are expected to comply. While this lack of communication and comprehension persists with the mob how can it really be expected to respond ? In a town of average size, say a population of $1\frac{1}{2}$ lakhs, it would take 4-6 hours for the curfew to be successfully imposed and during this period rigidity, on the part of the law and order enforcement agency, on the point of apparent violations of this curfew order, is certainly unwanted and patently unjustified. A curfew can be anticipatory and can possibly save a situation if the sparking event is fortunately 4-6 hours distant from the time of imposition of curfew; and in an out of hand situation, the law enforcement agency must concede a similar period of 4-6 hours before it manifests any extreme rigidity in enforcing the curfew.

In every case where the law and order situation is disturbed an immediate call is sent out for a magistrate. The magistrate responds instantly—he must respond so, he knows

it is his duty to. In most cases this is about as much as he knows about his duties. The District Magistrate has sent him orders to report to the *Kotwali*—the choice fell on him probably only because he was living nearest to the District Magistrate and therefore was the easiest to contact. On reaching the *Kotwali*, after zig zagging through the night traffic, he enters quite unheralded though not unnoticed. There is a buzz of activity inside the *Kotwali* premises and policemen are moving around while excited talk is going on amongst the police officers seated around a table. It is only from snippets of overheard conversation that the magistrate gets the first inkling of what is happening and where. He has no idea of the force deployment that has taken place already and the deployment that is now being ordered—he also does not feel it is much of his business.

However, he starts showing an interest in the matter but being ill informed is unable to offer suggestions that could be considered concrete or imaginative. His interest starts waning and he just sits around. The District Magistrate rings up the *Kotwali* to get the latest and the magistrate on duty is able to give hardly any information—in contrast, the police officer who takes the phone away from the magistrate gives his version of what is happening and what is likely to happen. The District Magistrate is naturally somewhat dissatisfied with the sketchy assessment by the magistrate—but besides this dissatisfaction there is nothing else that occurs to him—he does not realise the aura of ignorance that the magistrate is functioning under.

During the night an incident occurs. News reaches the *Kotwali* and there is a general alert. Pickets at that point are weak so a small force rushes into a vehicle; the magistrate is taken along, sitting squeezed in between the driver and the accompanying police officer. The police officer conjectures, enroute, about the person who could possibly be held responsible for this incident, but, the magistrate maintains a discreet silence

because he has never heard of the names that the police officer is speculating about. By the time the vehicle reaches the spot, the police officer has made up his mind and is certain about the persons he should apprehend. He rushes out of the vehicle, with the other policemen close at his heels, and, after scattering the small crowd assembled there, proceeds to pull out from their houses persons he feels are behind this trouble. This action, for whatever reason, leads to further trouble, may be because those apprehended are innocent, or may be for any other reason, and, a commotion starts. The situation deteriorates very rapidly and the small police party gets in danger of being overwhelmed. There is no question of a *lathi charge* and there is no tear gas—firing results and some people die, others are injured. Our magistrate who has been little more than a spectator has finished the first phase of his role as an 'innocenti' and now he shifts to his next role—that of a 'scapegoat'.

As 'scapegoat' he is atonce put on the receiving end of the enquiry that has been ordered into the incident. Subsequent to the event, and after careful deliberation, the *roznamcha sanad* has been thoroughly written. The police force develops a hostile oneness and the magistrate is described as the key witness—the police force was acting under his guidance and though the *roznamcha* will certainly attempt to bring out facts to support the action taken, but, in case the *sanad* is not fully credible, the inconsistencies ought to be explained by the magistrate under whose guidance the entire thing was done.

The predicament of the magistrate is indeed pitiable. As a magistrate on duty he is expected to control and guide, but due to reasons, which will be discussed later, he has functioned more as a witness rather than as a magistrate. If he admits the truth, he stands exposed as a most incompetent magistrate and if he plays along then he has the unenviable task of supporting a situation in the creation of which he had

no role to play. whichever course he chooses is full of obstacles.

True, the illustration I have given may be dubbed as hypothetical but it is not entirely so. The illustration is based as a sequence where each part of the sequence is faulty and certainly all these faults do not necessarily occur in every law and order sequence. But, I insist that in actuality, every law and order sequence does contain some parts of the sequence that has been offered as an illustration.

Now the question arises as to why does this happen to a magistrate ? and the more important question that why is this allowed to happen to the magistrate ? Is there a way out ? How can a magistrate become effective and begin to perform his functions as expected of him ?

Two main things seem to be at the crux of the pitiable plight of the magistrate. The first is the lack of status and recognition of the magistrate and the second is his abysmal lack of information.

To improve the status of the magistrate it is certainly necessary for him to show his worth, and, looked at in this way both the above points are interrelated; but, for purpose of clarity, I will try and deal with each of the points separately and only mention the interrelation that quite obviously exists.

A magistrate, once appointed for law and order duty must be recognised by the police for what he is supposed to be—in a certain manner the representative of the District Magistrate, who is in overall charge of the law and order situation in the district. The District Magistrate must give the police the impression that this is exactly what the magistrate is—subordinate to the District Magistrate but by no means a subordinate of the police. At the *Kotwali* he should be shown proper respect and be received cordially. Instructions on this point

is all the District Magistrate has to give. Further, the police must make it a point to convey all information to the magistrate as soon as he reaches his point of duty. Actually, elaborating on this point any further seems unnecessary and in brief what has to be done is that the District Magistrate, even in day to day administration, must convey to those concerned the worth of his subordinates. If this is done properly and effectively there is no reason why there would not be adequate regard for a subordinate magistrate.

I now come to the second and somewhat more important question—that of developing a well informed and knowledgeable magistracy. It is indeed an unfortunate development which has resulted in the Revenue Officers losing touch with crime and criminals. With the total separation of the judiciary from the executive, the familiarity with and interest in of the Revenue Officer, the crime in his jurisdiction has waned. He has come to believe that it is for the criminal to commit the crime, for the police to investigate and prosecute and for the judiciary to acquit or punish. In this sequence the executive magistrate begins to feel he has no place and an understandable apathy results. But this apathy is what humbles him, when, in law and order situations, he is called upon to function as a magistrate. He can't place the situation in any context and he is unfamiliar with the characters in the situation, because he has no background and hence he is compelled to look innocent. Having no views of his own he must rely totally on what he is told by the police, and the police, in any case does not tell him very much. He has to agree with whatever little he is told because he has no matter of his own with which he can contradict. He therefore becomes, as has been shown in the above illustration, an innocent scapegoat.

To cure this State of affairs, I feel, that to begin with, every densely populated area, a town or a big village should be divided into various sectors. All headquarter magistrates

should be assigned a sector each and they should be instructed to make themselves fully conversant with all features of their respective sectors. A magistrate should know the roads, the lanes and the turns, the people living there, their habits and habitants, the good and the bad people—he should know them by name. He should know the trouble makers and where they generally assemble—he should know the helpful men and where they can be found. He should acquaint himself with the criminal history of the sector and the law and order disturbances that have developed there in the past and how and in what way future distrurbances could possibly occur. His evening walks should take him to his sector where he should make it known that he is the sector incharge magistrate and that he is interested in maintaining peace in his sector. Occasionally he should take the Station House Officer along with him and the two should be seen together—but what is most important is that he should capture the confidence of the residents of that area. People there will soon start appreciating his interest, especially, after he successfully settles and nips in the bud a couple of potentially ugly situations. They will start speaking freely with him and will confide in him. Happenings in that *Mohalla* will be conveyed to him and if any police partialities occur, as they invariably do, the people will approach him, and, his stature, as an impartial magistrate will grow; the police will, as a result, show more alertness and function better because their irregularities will now no longer be left unexposed.

Once our magistrate has heeded this and has prepared himself in this manner then if any trouble should arise in this sector, the District Magistrate should, in the first instance look for him and send him to the *Kotwali*. What a changed man our magistrate will now be. No longer unknown—no longer ignorant—no longer innocent and no longer prepared to be a scapegoat—he will in fact be a full-fledged magistrate i. e. just what he is expected to be. The police can't ignore him

because he has in earlier instances shown his worth and moreover he is now no longer prone to be duped. He will have his opinions, his assessments and his responsibilities and thus prepared, there is no reason why he should not discharge his responsibilities to the best of his abilities. Is he not a better man than the man we started with ?

So far three main aspects of the maintenance of law and order have been dealt with in some detail. Another societal problem is the larger than life reality of dacoits. Removing this menace by the fantastic technique of mass surrenders is indeed a terrific solution—though giving this permanence becomes a problem by itself. Madhya Pradesh is the first state in the country to undertake this experiment and only time can show the concomitant problems and the steps taken to face them.

However, where, in most states, this novel venture has not been undertaken or for some reason cannot be undertaken, there dacoity continues to bug the law and order enforcement agencies as it has being doing for ages. Is there scope for improvement in the techniques and policies adopted in these areas ? There is certainly scope for discussion.

The initial dilemma is one concerning the nature of the arms licensing policy that should be adopted. A liberal policy is expected to generate a local, confident and effective resistance, though on the other hand it may result in the issue of licences to those sympathetic towards the dacoits and they, the licencees, may become a source of arms and ammunition for the dacoits. On the other hand, a stringent licencing policy may lead to the creation of a country side utterly susceptible to the inroads of dacoits. On balance it seems that the liberal policy has more in its favour than against it. Licencees can hardly ever become major arms and ammunition suppliers for the dacoits; at best they can add a trickle to the vast flows that come from so many other known

sources—and if this is conceded then there is no reason why the Government should deliberately create a weak countryside and at the same time restrict the right of private defence of so many persons. Since fighting dacoits poses a risk to the lives of the members of the enforcement agency it therefore becomes imperative that people involved in such operations are prepared to risk their lives while performing this duty. Police personnel in dacoity and non-dacoity areas face completely different risks and burdens and it is therefore necessary that this difference is realised and where the risks and burdens are greater, adequate administrative facilities exist to compensate for this additional risk and burden.

The selection of an aggressive constabulary is clearly the first preliminary. Recruits for this purpose must come from an area where aggression is more prominent than tolerance or submission and subsequent specialised training should foster this aggression further. Systematic conditioning must be undertaken to ensure that when these men operate against the dacoits they function with a zeal, almost amounting to enemity against the dacoits. The training programme must result in not only hardy physical beings, but also, under the guidance of a psychologist if necessary, in producing a set of persons who are mentally convinced that their raison d'etre is nothing but the elimination of dacoits. The creation of such a force is imperative because without it we end up with the present day awkward situation of heavily out numbered dacoit gangs successfully escaping unscathed, from an almost total police cordon.

Next, the question of covering the risks that these persons go through. The man risking his life must be given the psychological satisfaction that if he is killed in action or badly injured and thus rendered useless, the State will do all within its powers to rehabilitate his family and compensate them.

Nowadays when a policeman is fatally injured the only

administrative responses are the announcement of a hopelessly inadequate grant and then the protracted pension procedures. Most of the constabulary has seen, in the cases of their unfortunate colleagues and their families, the administrative apathy and inadequacy after the man is either killed or rendered useless by injuries. These illustrations become the basis of the logic of the constabulary, a logic that concludes on the note that risking one's life is "just not worth it". Thus assuming, quite justifiably, that the minds of the constabulary are tuned in on this "no risk" frequency how can one expect results ?—and at the same time how can the mental frequency be changed to a "risk" frequency ? My suggestion here is that a compulsory life insurance scheme should cover such persons. The premium being divided, in a mutually acceptable ratio, between the state and the constable. This will go a long way in clearing doubts and apprehensions in the minds of the constable, and will remove from these persons the mental obstacle reflected in physical diffidence in dangerous situations.

Besides the above step, which I regard as not only essential but quite fundamental, other suggestions would be, a canteen for police personnel in dacoity areas, monetary allowances, adequate family quarters to enable a man to feel the security and love of his family whenever he returns from the hazards and uncertainties of an anti-dacoity operation.

I next come to the operations and encounters. The first and most obvious observation is that an encounter with a docait gang is treated as an end in itself. Once contact is established with a gang and shots exchanged then the time seems to be opportune for rapid radio signals carrying news of the encounter and subsequent backslapping even in circumstances when through sheer incapacity the encounter produced no results. In certain minds an incorrect presumption exists that an encounter is an end in itself. I have come across very few officers, although there are a few, showing interest in a

post-mortem of each encounter. This post-mortem is a must and on the basis of this post-mortem, those if any, guilty of cowardice, carelessness or lack of imagination must be suitably reprimanded. The tendency of policemen to build up reputations by ennumerating the number of encounters should be and can be effectively checked if detailed post-mortems are done as a rule. Even in encounters where the police has obviously done well and has succeeded in badly mauling a dacoit gang, the post-mortem should be on the point as to whether the mauling could have been worse.

Another point in this sphere of anti-dacoity operations is the ad-hoc deployment of force against the gangs. What I wish to say is that at present the tackling of dacoit gangs takes place at district level i.e. normally the District superintendent of police, where the dacoity takes place, goes on the alert and pits his resources and imagination against the gang. If the same gang, a few days later commits a dacoity in another district this will cause the S.P. of that district to go on the alert, and so on. Thus whereas a dacoit gang shows little respect for district boundaries, the enforcement agencies normally do. Given the multiplicity of gangs and the sporadic nature of their dacoities, they operate with a tremendous advantage because the "district boundary bound" police force is unaware of the gang and its reflexes and habits, as an entity, and, in the absence of the knowledge it becomes almost simple for the unidentified gang to hoodwink the police.

To overcome this obvious handicap it is very necessary to have, at the divisional level an information and intelligence centre. The initial task of this centre should be to give a clear identity to each gang— not only in terms of the number of persons in the gang and the approximate quantity of arms it carries—these are no doubt important—but equally important and utterly useful are the identifying features in terms of the other characteristics of this gang. For instance, the manner in which they operate, the base camp they head for after the

offence, the manner of their retreat, their intermediary hideouts, their gang security system, their anticipated mobility per day, its reaction to encounters and all other relevant features that can particularise this gang. This comprehensive information should be made available to all the S.Ps. within whose jurisdiction the gang normally operates, and whenever a dacoity is committed, the first task of a S.P. should be to identify the gang with the help of the information centre if necessary.

Another necessity needs to be introduced into this schematic set up and this is the need for a set of trained and well informed and well briefed police personnel assigned the almost permanent task of liquidating a major gang. One set of police personnel for one major gang—this is what the ratio should be. The number in each such set can be ascertained on the basis of the approximated strength of the gang it is pitted against and this set of persons must know all there is to know about the gang they are against. Whenever the whereabouts and identity of a gang become known this concerned set of police personnel should be immediately brought into the picture and from the first contact onwards this set should be in constant pursuit of the gang. They should be sufficiently well equipped and trained to not feel the need of frequent returns to headquerters for replenishment or respite; and even after a contact has been broken, there should be no respite in efforts to re-establish the contact. It is only by stalking a man eater that the menace can be destroyed and similarly, it is essentially by stalking the dacoits that the dacoits can be destroyed. This analogy needs to be taken more seriously and unless this is done adhoc and chancy successess will never result in liquidation. An undeclared state of war must be created and sustained and it must be realised that incidental skirmishes will never solve this problem.

To briefly recapituate, in conclusion, I have initially emphasi-

sed the importance of numbers in the police force and how a deficiency of numbers can fundamentally alter and limit the discretion of the law and order enforcement agencies. The question of mob control and some of its important aspects have been dealt with next and it has been argued that there is considerable scope for thinking on new lines. The training of the firing squad has been stressed as also the option of weapons that can be used for dispersal of mobs. The necessary time lags in curfew has come up for comment next and this has been followed by the role of the present day magistrate. Dacoity, one of the most abhorrent aberrations of a civilized society and the liquidation of dacoit gangs has been the last major issue for comment.

Only a few problems associated with the maintenance of law and order have been touched upon. The selection of the issues involved may appear to be somewhat random—but this is not so. The underlying considerations, in the selection of the issues, has been not only its relative importance but also the potential for improvement, the possibility of a new look at old arrangements and thoughts.

Law and Order : Eternal Vigilance

J. P. Bansal

Before we can enter upon the discussion of the subject-matter which forms the staple of this essay it will be proper to attempt a glance at the meaning of the terms, 'law', 'order' and 'administration'. The definitions of these terms are legion, but we have to steer clear ef the complexities involved in their thread-bare discussion and elucidation. Oxford Concise Dictionary defines 'law' as the body of indicated or customary rules recognised by a community as binding. It defines 'order' as prevalence of constituted authority, a law-adiding state, absence of riot, turbulance and violent crime. The term 'administration' has been defined by it as the management of public affairs. Law, order and administration are so inextricably intermixed with each other that if any one of them is taken off the board the entire mystique of the scheme of things

shall come tumbling down like a house of cards. All the three put together are aimed at creating social, educational, political, economic and cultural conditions under which each person while contributing his mite to the over-all development of the society of which he is a member, may develop his faculties to the widest possible extent unhampered by the fear born of violence, individual or collective; they virtually constitute three pillars of a canopy under which a society acting through a government of its own functions for the welfare of its members. Law is a pre-requisite for the maintenance of order. There can be no law to prevail unless there is order. The administration to be effective must be based on rule of law, which we shall discuss in the following pages, and not on the rule of order which smacks of regimentation or dictatorship.

Historical Background

Until the 19th century law was regarded as a set of commands, prescribing and regulating the conduct of human beings, and enforced by the established authority. It was made to seek its parentage in the established authority rather than in the collective will of the people for whom it was meant. The area within which it was made to operate was also very limited. Its only function was to ensure political stability and to help maintain peace and security in the society. Barren of justice and fair play it lacked ethical content. Since the established authority regarded economic activities and industrial processes as something sacrosanct meant not to be interfered with, it did not serve as an instrument of social justice and economic control.

The 19th century witnessed an unprecedented flurry of activity in the economic field. The western world made great strides in the industrial field which in turn enabled them to plant colonies abroad. The industrial revolution with large scale migration of populations from rural to urban areas,

growth of slum areas in the towns and labour strife as its necessary concomitants widened the area and scope of law by rendering state interference essential. It was still an age of laissez faire and capitalism reigned supreme, the rumblings of economic and industrial discontentment, however, had begun to produce ripples in the placid waters of political stability.

What we witness today is an expansion on an unprecedented scale of the field of law following the undreamt of progress man has made in various fields, economic, industrial, cultural and political. Hardly is there a field of human activity which is not regulated by man-made law. The progress we have made has brought in its wake many a complexity which renders the help of law necessary to solve our problems. Our legislatures are turning out a great amount of legislation to deal with the situations of various types and hues as and when they arise. Nothing to speak of an ordinary citizen, it is not possible even for a lawyer or a judge to keep himself abreast of new development in all the branches of law. The legal aphorism that ignorance of law is no excuse has lost much of its significance. The law and order situation now is, to say the least, too complex and ticklish an affair to be dealt with in an ordinary manner as we have hitherto been doing. That is why some people have come to regard law as "brooding omnipotence"

Rule of Law

Since the State has come to regard itself as a purveyor of social justice and a controller of the economy of the nation, the concept of the rule of law as distinct from the rule of order has undergone a great transformation. It is no longer an idealist's dream. It envisages a state of affairs in which the civil and political rights of an individual are well protected, creates conditions in which there is no clash between individual liberty and social justice, helps the creation of an atmosphere in which the legitimate aspirations of human

beings may be realised; and finally establishes the supremacy of law, based as it is on the supreme value of human personality.

The concept of the rule of law sprang into prominence when Dicey laid down the following three propositions ;

(i) The supremacy of law as opposed to the influence of arbitrary power, excluding the existence of prerogative or even of wide discretionary authority;

(ii) Equality before the law, excluding the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens;

(iii) The law of the Constitution is not the source but the consequence of the rights of individuals as defined and enforced by the courts.

Dicey's concept of the rule of law, though valid in its fundamentals, has lost some of its relevance in view of the phenomenal rise in the socio-economic and other welfare activities of the State. The State is no longer a glorified policeman as it used to be until the 19th century or a passive spectator off all that may happen in the society. Dicey seems to be obsessed with the courts' prerogative to define, determine and finally protect the right of the individual, and pours ridicule on the administrative tribunals which, as in France, are entrusted with the task of expeditiously deciding disputes of special nature such as industrial and labour disputes. At a time when the courts, moving at a pace slower than that of the tortoise, are faced with mounting arrears of work and the presiding officers, strait-jacketed as they are by a set of complex rules of procedure, do not see the light at the other end of the grisly tunnel and also when the economically-backward but politically-awakened masses refuse to be cheated out of what is due to them and what has hitherto been denied to them, the courts cannot all alone deliver the

goods. Now-a-days what we, therefore, see is a rapid expansion in the jurisdiction of the tribunals.

The Indian Constitution fully embodies the fundamentals of the concept of the rule of law as opposed to whim or caprice. No person can be deprived of his life, liberty and property without the authority of a valid law. All are equal before the law, and are also entitled to equal protection of law. No discrimination based on the ground of caste, creed, colour, religion or place of birth can be practised. Rule by executive fiat is not permissible.

There is a lot of confusion and obscurantism about the content and purpose of the phrase "committed judiciary" which has gripped the minds of the people of India. The confusion is worse confounded by the unhappy controversy over the supersession of three judges in the matter of appointment of the Chief Justice of of the Supreme Court of India in April, 1973. While the Government of India speaks of the "forward-looking social philosophy and outlook" of the judge and of the "stable relationship" of the judiciary with the executive, its critics see in the recent supersession of the three judges a deep-laid conspiracy to undermine the independence of the judiciary. One thing on which both the parties are agreed is the importance of the role judiciary is to play in the administration of law and order. If we rid the real issue of the froth and fume and after the dust kicked up by the controversy settles down we will find that there is nothing basically wrong with the phrase "committed judiciary". The judges cannot tear themselves apart from the society, nor can they refuse to reflect the urges and aspirations of the masses and the tone and temper of the times. They have to be committed to the socio-economic changes which are taking place in the society and not to the political philosophy of the party in power. Their main business is to deal out equal justice to the parties before them in accordance with the law of the land. The day is long past when the judges

used to show off their erudition by handing down voluminous judgments stuffed with a catena of decisions and laced by silvery legal phrases.

The importance of an organised and powerful bar in the field of administration of law and order cannot be overemphasised. What we want is a forward looking bar dedicated to the ideals of justice and fairplay. The actual position is quite the contrary. The success at the bar is measured in terms of money one is able to earn rather than in terms of service one is able to render to the society in more ways then one. He is an intelligent lawyer who successfully clogs the speedy disposal of the case. A poor litigant has no standing room under the glittering canopy of the bar. "Legal Aid to the Poor Litigant" propaganda has not so far got off the ground; all lies in the region of speculation. It is because of these reasons that the members of the bar have forfeited public sympathy and support, and have come to be looked upon as persons who fatten on the miseries of the poor persons.

Causes

The question which keeps constantly beating in our minds is why is it that the problem of the administration of law and order which only a few decades age did not require much effort to deal with, has assumed alarming proportions. It has got so inextricably mixed up with the other socio-economic problems that it cannot be wholly or partially divorced from them. Let us examine the causes which have made our task in the field of administration of the law and order very much difficult to deal with.

Poverty

The problem of poverty in India is so acute that it defies, nay mocks at, all our attempts to tackle it. The undercurrent of helplessness is clearly visible in the voice of our Prime Minister, Indira Gandhi, when she says that if anybody tries to say that poverty can go in her lifetime or during her tenure

as Prime Minister, it just cannot. It has something which has deep roots. Even if we go by official estimates there were more than 37 million people whose daily expenditure was barely 50 paise in 1968-69. Not less than 222 millions of our people are living below the poverty line. How many of them are close to the starvation line and do not have two square meals a day in anybody's guess. At the present rate of economic growth it will take about three decades to half a century for the poorer sections of the community to overcome their penury. He is a brave man who can expect the masses in the conditions detailed above to act and conduct themselves as law-abiding citizens and not to give sleepless nights to our administrators of law and order.

Unemployment

The alarming increase in the army of jobless persons, both educated and uneducated, has shown no signs of abatement with the result that apart from putting our entire structure of planned economy out of commission it has posed a serious law and order problem in the country. The number of the registered unemployed stood at 7.27 million in April, 1973, compared to 6.9 million in December 1972, and was more than double the figure at the start of the Fourth Five Year Plan in 1969. Among the registered job-seekers, 50 per cent are educated-matriculates and above. The crash programmes special schemes so far undertaken by us to relieve the situation, have failed to pierce even the outer crust of the problem. There can be no blinking the fact that a jobless person is more often than not a threat to the peace and security in the society.

Inflation and High Prices

Inflation which is the enemy of stability and progress is the mother of all evils. It is the 'counterpart of civil disorder, famine and other cosmic disorders'. The unprecedented increase in the supply of money which over the year ended

June 15, 1973, stood at Rs. 1376 crores as compared with Rs. 1036 crores over the preceding 12 months, has pushed up the prices of almost all the goods and articles. The general price level went up by 19 per cent over the year ended June 15, 1973. This was the higest rate of increase in the general price level in any one single year since independence. One wonders what exactly all our labours for the economic betterment of the country are worth. If we go by the official figures the rupee (base 1949-100) which was worth 74.06 paisa in 1963, 47.08 paisa in December 1972 and 37 paisa in April 1973, has fallen to 36 paisa in May 1973. It has bent to a breaking point the backs of the millions of people especially the people with fixed incomes and has thwarted country's development potential, thereby giving rise to widespread discontentment which is sure to erupt into violence sooner than latter.

Population Explosion

In spite of our several family planning programmes meant to regulate the growth of population our population is increasing at the rate much faster than the one warranted under the prevailing circumstances. A proliferating population that is diseased and half-starved is a drag on the progress of the country. We are here concerned with the effect of population explosion on the administration of law and order. The fact cannot be whisked away that the increase in the number of crimes is almost commensurate with the growth rate in our population—the more the population the greater the number of crimes.

Corruption

The Committee on Prevention of Corruption in its Report (1962) defines, corruption as improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life. To put the matter in a nutshell, it can be defined as the use, abuse or misuse of

official power, authority or discretion for personal or other's gratification.

In recent years, especially after the 1967 general elections, political corruption has assumed alarming proportions and constitutes a grave threat to the political stability of the country. The legislators have come to be looked upon as a commodity which can be sold and purchased in the open market. This unabashed horse-trading renders the law and order situation tospy-turvy by introducing an element of uncertainty in the field of administration. The government has moved in the right direction by introducing in the Parliament on May 16, 1973, a Constitution Amendment Bill to disqualify a defector from membership of Parliament or State Legislature.

Allied to political corruption as discussed in the preceding paragraph, is the corruption indulged in by powerful politicians for their selfish purposes. What marks these politicians off from other classes of influential persons including bureacrats is the fact that they are supposed to set down certain norms of behaviour and conduct which are to be followed not only by the masses whom they claim to represent but also by the persons who work under them. A corrupt politician is much more dangerous than a corrupt bureacrat, for the latter interferes with the smooth functioning of the State machinery whereas the former puts it out of commission. What heightens the enormity of the offence is our failure to inflict exemplary and condign punishment on those found guilty. Mere exposition of their misdeeds to public view will not do.

Indiscipline

The Concise Oxford Dictionary defines discipline as "a system of rules for conduct, mental and normal training". The very survival of the society, nothing to speak of its development, hinges upon our observance of the rules of discipline. The discipline, to be effective, depends upon the three-fold

dictates of example, non-exemption and enforcement. Those charged with the imposition of discipline must be the exemplars of discipline. In other words, it must begin at, and emanate from, the top. Whilst discipline draws sustenance from example and imitation, indiscipline like an infectious disease proliferates quickly downwards and outwards. Nobody, regardless of his rank and status, must be exempted from the common discipline applicable to all. The enforcement and punitive action must be proportionate, swift and firm.

If we judge ourselves by the foregoing yardstick of discipline we will find that hardly is there a field of national activity, economic, social, political, administrative, cultural and educational, which is not suffering from the baneful effects of indiscipline. Indiscipline has even seeped into the ranks of those who are entrusted with the task of maintaining law and order in the society. It was for the first time since independence that on May 20, 1973, the men of the Provinsial Armed Constabulary joined hands with the campus hooligans at Lucknow in an unprecedented expression of their own grievances and frustation, and clashed with the regular armed forces. This mutinous behaviour indicates that we have touched the nadir of degradation in the matter of indiscipline.

Strikes And Bundhs

It will not be an exaggeration to say that India is living through an age of strikes and bundhs. In a single month of May, 1973 we had Bombay Bundh on three days with its accompaniment of disorder and disrespect for authority, Poona riots and revolt of Provincial Armed Constabuliary in Uttar Pradesh. Lawlessness and proneness to violence is on the increase. More often than not outrageous vandalism and reckless adventurism mark these strikes and bundhs. Respect for the authority is a thing of the bygone days. In 1972 there were 80,000 riots in the country. In Bombay alone, there were

12,089 *morchas*, demonstrations and meetings during the past 18 months—an average of 24 public protests a day. During the last 20 years, the police opened fire about 2500 times on riotous mobs. According to official estimates, "...the statistics of the 1960 strike present an interesting picture. There were about 120 cases of sabotage on the railways, and 30 in the Posts and Telegraph, 244 cases of rioting, assault and intimidation; 24 cases in which the police resorted to the use of tear-gas or lathi charges; the police opened fire in five instances, and five persons died; 170 policemen and 29 volunteers became casualties; nine volunteers lost their lives in accidents while guarding the railway track. Besides all this, the bill for the cost of the emergency arrangements and on account of loss of traffic revenue alone was reported at about Rs. 4.5 crores; and, in terms of wages lost, a little under 70 lakhs".

The Constitution of India

One thing which is beyond the pale of controversy is that the Constitution of a country must suit the genius of her people, reflect their urges and aspirations and be based on their cultural traditions, social norms, economic proceses, historical temprament and political background. When we apply these tests to our Constitution, we find it is lacking in some of these factors. In an attempt to pick up the best points from a number of Constitutions we ignored our own traditions which arose from the soil and in the process had nothing but a conglomeration of various constitutional provisions of law. To import wholesale the constitutional provisions from the foreign lands is like putting the fur coat on a fisherman on the African coast. The founding fathers of the Constitution of India rested under the impression that a single political party manned and managed by a dedicated band of selfless politicians would continue to guide the destinies of the people, and the politicians of varied hues and colours would observe

the rules of parliamentary game. They did not visualise the strains and stresses to which our system of government would be subjected to. They did not take into consideration what happened in France. What took place in Pakistan before 1958 is there for all of us to see and draw our conclusions from. The day is not far off when the French example would be repeated in India. The French people heaved a sigh of relief when in 1958 De Gaulle appeared on the scene, put an end to the prevailing system of government and restored political stability by establishing the Presidential system of Government. Can it be said that France has turned its back on democracy and all that it stands for. So long as the Prime Minister or the Chief Minister does not feel secure in his office for a given number of years, he can never run the administration with confidence. In these circumstances the administration of law and order is the first casualty. There can be no denying the fact that '.....in the name of parliamentary democracy, we have fostered the growth of a vicious system. Its replacement by a pragmatic one, suited to Indian conditions, alone can save the situation'.

Suggestions

One thing which stands like a China Wall in the way of our progress is our almost pathological opposition to the introduction of any drastic change in our structure, political, economic and social. Opposition to innovation in any field of activity, however worthwhile and beneficial, is bred into our bones. Little do we realise that serious malaise requires drastic remedy. Again, the dead hand of the past cannot be allowed to guide our present actions in such a way as to blast to pieces our hopes for the future. It is not the whole truth to say that our present system of democratic set-up cannot withstand the changes necessary for the development we want to bring about. The suggestions for what they are worth may be summarised as hereunder:—

Deletion of Article 311 of the Constitution

The makers of the Constitution looked upon the principle adumbrated in this Article 311 as the sheet-anchor of the security of services. The concept of the security of service does not run counter to that of the welfare of the society of which the public servants are themselves the members. If past experience is to guide us we cannot escape the conclusion that we have acted in such a fashion as to make a fetish of the concept of the security of services; that the public servants have used the provisions in question more as a sword than as a shield which they really intended to be; and that the salutary provisions have degenerated into a licence for the irresponsible hot-heads to strike at the very root of the concept of welfare state. Inefficiency, corruption, decility, indifferentism and irresponsibility charactise the functioning of the public offices. Conscientious employees can be counted on the tips of fingers whereas we will need computers to count the bad ones. The question is what have we got to do to come out of the present impasse ? We have to chart out a system which, while leaving the concept of the security of service intact and unimpaired, may simplify the disciplinary proceedings and at the same time make it very difficult, if not impossible, for an erring public servant to escape the consequences that may flow from his acts of omission and commission.

Reconstitution of the Police Force

It is an irony of the situation that the policemen in India is hated, feared and dreaded rather than loved, respected and praised by the people. A former Judge of the Allahabad High Court, Shri A. N. Mulla, dubbed the entire police force as a legalised band of dacoits. 'The police have been the subject of attack by press and politician, Bench and Bar, lawyer and legislator, rogue and reformer, citizen and criminal. They have been pronounced as corrupt, barbarian and vile; they have been denounced as perjurers, man-hunters and so forth.

There is undeniably a general climate of opinion adverse to the police, a deep-rooted prejudice, fear and suspicion.' The people have come to regard the police force as a necessary evil. The policeman has himself to blame for it. This deplorable state of affairs is highlighted by the recent incident in which a number of police officers laid siege to a village in Bihar, assaulted the hapless villagers and even indulged in orgies and brutalities against their womenfolk including the girls of tender years.

Against this historical background, we cannot support the suggestion contained in the 48th Report of the Law Commission to the effect that the police officers should be given the power to record confessions of the accused as is the case in Britain where a confessional statement made to a police officer can be used against the accused provided the police officer cautions him that the statement can be used against him. We cannot afford to be thoughtless imitators. The conditions which prevail in Britain are dissimilar to those which obtain in this country. Justice Straight's observations in *R. V. BABULAL (1884) 6 ALLAHABAD 509* that 'these legislative provisions (Section 25 of the Indian Evidence Act, 1872, which declares confessions made to a police officer inadmissible) leave no doubt in my mind that the legislature had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions and that those malpractices went to the length of positive torture' still ring true.

The question is how can we refrom the police force of its dross and transform it into an effective instrument for the administration of law and order. First, we have to effect an improvement in their present service conditions which being unsatisfactory breed discontentment and frustration. Second, we have to maintain strict discipline and any breach of it must be visited with swift and exemplary punishment. Third,

political interference which has wrought havoc must be put an end to. Last but not the least, the policemen must be made to realise that they are the servants and not the masters of the people.

The use of force by the police to control the riotous mobs has been a subject of virulent controversy. The police are often accused of using more force than is warranted by the situation. It is true that we are not possessed of a yard-stick to measure the quantum of force necessary to control the situation, but we can be very cautious and circumspect even when confronted with the most awkward and difficult situations. We can lay certain guidelines to guide our actions. These may be : (1) Use it only when it becomes absolutely essential. In other words, do not use it if you can help it, (2) If firing is to be resorted to, then, first of all, fire into the air to scare away the crowd, and if it fails, then the aim should be kept low so as to injure the legs aud not the body, (3) Use as little force as necessary, and (4) Follow it up with an inquiry, preferably a judicial inquiry.

District Administration

Without running any risk of being hauled up for contradiction we can regard district administration as the kingpin of our entire administration of law and order. If we can keep the former in good trim we can effectively control the lattar. The Police Act of 1861 vests in the District Magistrate the general control of the police in the district. Since the District Magistrate is not empowered to interfere in the day-to-day functioning of the police, his position vis-a-vis the Superintendent of Police who is head of police organisation in a district, can be likened to that of the titular head of a State. This state of affairs exists in respect of all other departments functioning at the district level. The result is that almost all the departments act as sovereign bodies and the position of the District Magistrate has been devalued to such an extent that in actual practice he cannot be said to be occupying the

position of even primus inter pares. The difficulty is further accentuated by the fact that in most cases inexperienced I. A. S. officers are placed in charge of the districts. The result is that they fail to bring about the type of co-operation among the various departments which is so necessary for the effective administration of law and order. The proper thing would be to place very senior and experienced officers in charge of the districts.

Separation of the Judiciary from the Executive

The separation of the judiciary from the executive has been the subject of considerable debate and discussion. Article 50 of the Indian Constitution enjoins the separation of the judiciary from the executive. There are few states in which we have achieved our objective in this regard. There are others in which there has only been partial separation of the judiciary from the executive. We can restore public faith in the administration of law and order by investing the judicial courts with the power to administer laws. It augurs well for the future that the people have abiding faith in the impartiality of the judicial courts.

Administration of Civil Justice

Our suggestions in regard to administration of civil justice are : (1) A considerable amount of time is lost in effecting service of summons for the determination of issues on the defendant. In the very beginning the court must order the service of such summons to be effected not only through the process-serving staff of the court as is the common practice but simultaneously also through the post office. This is sure to quicken the pace of the disposal of the suit, (2) The rickety chariot of the suit gets stuck in the mud when it comes at the stage of evidence. In order to extricate it out the mud we must take the assistance of the briefless advocates by asking them to record the evidence on commission. It must be within the power of a party to have his evidence

recorded on commission except where the court directs otherwise for reasons to be recorded by it in writing, (3) The courts must make very frequent use of the provisions of Section 35-A of the Code of Civil Procedure in order to award special costs against those who have resorted to dilatory tactics. To facilitate this change the Section 35-A should be suitably amended, and (4) The number of appeals must be restricted from two to one only. In suitable cases, an aggrieved party may go in revision to the High Court. Similarly, the provisions of Section 115 of the Code of Civil Procedure must be strictly construed and the High Court must interfere only in very exceptional cases.

Administration of Criminal Justice

The delay in the disposal of criminal cases is much more fatal to the administration of law and order than in the disposal of civil cases. It appears that we have tied ourselves into knots with procedural rules and regulations. The process of disentanglement must be set in motion. A few suggestions in this respect are: (1) The delay in the investigation of the criminal cases must be cut down to the minimum. If possible, a time limit should be prescribed except in the very complicated cases where the opinion of experts is needed, (2) Special attention is to be given to procure the attendance of the witnesses, (3) The rule requiring a sessions case to be disposed of by a judge who has once begun its trial must be done away with except in very exceptional cases. We have also to dispense with the enquiry proceedings lock, stock and barrel. The police challan in a sessions case must be filed direct in the sessions court, (4) We have to devise stringest measures to tackle very effectively the problem of including the innocent with the accused. This vicious practice which is very much prevalent in India has brought the entire administration of criminal justice to ridicule. We may take these steps: (a) The investigating officer is to see that no innocent man is challaned merely because he has been named

in the F.I.R., (b) Where the trial court comes to a definite conclusion that an innocent person has been hauled up before it out of sheer malice then it must necessarily record a finding to this effect in its judgment and impose a sentence of fine on the erring person. The law should be suitably amended to empower the courts to take these measures, (5) The perjurer should be fined by the court before which he commits the offence of perjury. The persent provision requiring the court to file a complaint against the perjurer is woefully inadequate, and (6) An unprecedented increase in the number of crimes has rendered the retention of the capital punishment almost necessary. There has of late been a growing demand for including still many more offences in the category of offences for which capital punishment can be imposed. Its imposition must be automatic wherever it is warranted. It has often been found that the courts in India inflict very light punishment on the offenders even in cases in which offences have been proved to the hilt. This trend has got to be reversed sooner than later.

Judicial Officers

What we desperately need is a dedicated band of honest, impartial, independent, fearless, intelligent and forward-looking judicial officers. We cannot get the right type of stuff unless we effect substantial improvement in their emoluments and other service conditions. They have to regard the time-tested judicial axiom 'justice delayed is justice denied' as a gospel truth, and not to get lost into the labyrinth of procedural rules. One thing they have to remember is that they have to decide the case and not to show off their erudition in the performance of their juridical acts. A judgment expeditiously prepared though not well-written is many times better than a judgment which, though stuffed with ornamental phrases and authoritative precedents, is pronounced after a great lapse of time.

A Fewer Number of Laws

On the one hand we set store by the maxim that ignorance of law is no excuse, on the other, we seem to be never tired of turning out a great amount of legislation. Our legislators seem to be labouring under a false impression that it is only the laws which can cure the society of the mainfold ills it is suffering from. Hardly is their a branch of human activity on which some enacted law or the other has not placed its heavy hand. The greater the number of laws the stronger is the possibility of their being bypassed and broken by the people. Let us not drive the people to hurl defiance at our enacted laws.

Simplification of Laws

The problem of simplification of law is quite distinct from the problem of reduction in the number of laws. The number of laws may be small, but still we may have to conjure away the difficulty arising from the complexity of laws. A piece of legislation which is susceptible to more than one interpretation and which is not easy to understand creates ticklish problems not only for the common man but also for the law-enforcing machinery. It breeds disobedience for the laws. One of the reasons for this none-too-happy state of affairs is that the laws are conceived and turned out in haste without prior consultation with the well-informed sections of the public opinion.

Lok Pals and Lok Ayuktas

A good number of State Legislatures have passed legislation providing for the appointment of Lok Pals and Lok Ayuktas. The practice hitherto followed has been that whenever the reputation of an influential public leader or a wily bureaucrat is marred in a public scandal a public enquiry is instituted to arrive at the truth. In no case does such an enquiry go beyond exposing the misdeeds to public gaze. The net result is a total failure. In order to clear the public life of corrupt

elements and to strike terror into the hearts of like-minded persons we must empower the Lok Pals and lok Ayuktas not only to arrive at the truth but also, in case the allegations are proved true, to inflict punishment on the delinquent.

One thing which shines like a noonday sun is that the problem of law and order cannot be considered, analysed and dealt with in isolation from other manifold socio-economic problems. Faced with a disquieting degree of violence all around us we cannot put the administration of law and order on an even keel by an unimaginative resort to sweeping powers of arrest and detention. The emancipation of the starving masses from the dreadful stranglehold of the spectre of poverty, unemployment and backwardness is an essential prerequisite for the success of our march on to the uplands of law and order. There is still time for us to make the choice—choice between the imperative need to bring about institutional changes even within the present framework and the directionless drift towards an anarchical state or affairs which is sure to engulf us all. The sooner we make our choice in favour of the institutional changes necessary for toning up the sagging administration of law and order and, what is most important of all, close the gap between practice and profession the better it will be for all concerned.

Law and Order Administration : Emerging Patterns

Surendra Sharma

> *"For, when these creatures (created by Prajapati) being without a king, through fear, dispersed in all directions, the Lord created a king for the protection of this whole (creation)."* —Manusmriti

Foundation of the state is made of rocks and mortar of security and protection—erode these and the whole edifice of state must fall. The dictum aforesaid from one of the earliest texts of mature human thought lays bare this truth. Political thinkers speculating on the origins and objectives of State seem to agree that security of individuals living in a society constituted the basic need for formation of the state. Whether this came about through a contract or was 'march of God on earth' is another matter. For Montesquieu 'a citizen's Political liberty is that peace of mind which comes when each man believes that he is secure. For such liberty to be possible the Government be so constituted that no citizen has cause to

rear another'.[1] For Kant the object of the state was to make and maintain law and ensure freedom of its citizens. For Aristotle, the state, while it comes into being for the sake of mere life, exists fot the promotion of the good life.[2] Kautilya in 'Arthashastra', expounding on this theme has stated :

> People suffering from anarchy, as illustrated by the proverbial tendency of a large fish swallowing a small one first elected Manu, the Vaivasvata, to be their king; and allotted one-sixth of the grains grown and one-tenth of the merchandise as sovereign dues. Fed by this payment, kings took upon themselves the responsibility of maintaining the safety and security of their subjects (Yogaksemavahah), and of being answerable for the sins of their subjects, when the principle of levying just punishments and taxes has been violated.

For any orderly growth of individual and society, for all advancement of civilization, for development of whatever is the best in human thought and action peace is the substratum. It is the canvas on which brilliant colours and vivid hues have been splashed in patterns, par excellence' by master's strokes. In the march of civilization, in clash of ideologies and internecine struggle for supremacy of different systems enforcement of order has been sought as possessing of transcendental quality. It is fundamental to all forms of Government—democracy, dictatorship, despotism, fascism.

Order being understandable, what is 'law and order' and why do we use the term 'law and order' ? Oxford dictionary defines 'law' as the body of indicated or customary rules recognised by the community as binding and 'order' as prevalence of constituted authority, a law-abiding state, absence of riot, turbulence and violent crime. Based on these premises 'law and order', in an integrated sense, should mean :

1. L' Espirit des lois—Book I, Ch. VI.
2. Politics, I, C. 1, 8.

Condition of peace, and freedom from violence obtained in a social order through binding force of customary rules.

Locke describes the legislative power as 'that which has a right to direct how the Force of the Commonwealth shall be imploy'd for preserving the community and members of it'.[3] Execution of laws being always necessary there must be some power which functions continuously in order to see that laws made are carried out.

Who performs this fundamental function ? Several agencies of the state are involved—the judiciary, the magistracy, the police, the jail. You catch the law-breaker, try him, punish him and perhaps reform him, so that he gets rehabilitated within the society. According to S. S. Khera, these agencies are : (1) the Magistrates; (2) the Police; (3) The Courts of Law; (4) the Armed Forces; & (5) the Citizens.[4] In the official hand book for Britain[5] 'law and order' is dealt with under following heads :

(1) Law including criminal and civil courts.

(2) Treatment of offenders including prisons, probation, treatment etc.

(3) The police service.

Therefore, when we think of 'Administration of Law and Order' we should think of agencies connected with law and order as enumerated above and their administration. This presents too wide on area to be encompassed within the limits of this essay. It being necessary to clearly determine the parameters of this term we have to take a narrower meaning in which it is generally understood. In a popular sense it is the domain of police and the magistracy to administer 'Law and Order' as the executive arms of the Government. A police

3. Locke, 'Of Civil Government'.

4. Khera S. S., "District Administration in India" pp 90 to 101.

5. Britain 1971 : An offical Handbook, PP 79 to 108.

otficer has been termed as 'an agent of the law of the land, not of the police authority nor of the Central Government.[6]

There is another interesting angle that merits our attention even though it is somewhat theoretical in content. When one, talks of 'Administration of Law and Order' what precisely is meant by it ? Does it mean criminal administration or handling of 'law and order situation' ? Going a little further I would like to define the latter as under :

> "A situation resulting from a number of persons associating in an agitational manner creating conditions fraught with apprehension of breach of peace or involving actual breach of peace".

Thus a demonstration, procession strike, gherao etc. organised by political parties or any other segment of population like students, employees, labour etc. will constitute a threat to law and order even though these are not accompanied with violence. On the other hand, there is day-to-day dealing with crime, prevention, detection, investigation, prosecution etc. in accordance with the provisions of law. It is not without significance that the Police Act[7] states in its preamble 'whereas it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; it is enacted as follows :'

> "Evidently 'criminal administration' is a generic term covering law and order also. But what distinguishes a law and order situation from an ordinary crime situation is that large number of people are affected and the ordinary life in the street is hampered and even jeopardised. In the priority of things, therefore, a law and order situation must take precedence over all ordinary criminal work. 'Administration of Law and Order' will

6. Britain 1971—An Official Hand Book, Pp 107.
7. Act V of 1861.

mean criminal administration with special emphasis on law and order."

One of the senior civil servants has described six principles underlying law and order as such :

> "That law and order are an inseparable entity; that law and order must claim absolute priority; that the rule of law must prevail; that law and order must comprehend the safety of all, without any exception whatsoever; that law and order involves the sanction of force; that law and order can prevail only if the principle of civil supremacy prevails".[8]

It shall be illuminating how to view law and order administration in its historical perspective. During the Mughal period Faujdari system of maintaing law and order was in vogue. A Faujdar discharged executive functions within the limits of 'Sarkar' (the rural district). His position could will be compared with that of the District Magistrate in modern times with the difference that Mughal administration was mainly military in character and the Faujdar combined the functions of both the garrison commander and the Chief Police Officer. 'Sarkar' was divided in parganas or sub-divisions which were in charge of Siqdars. Parganas were further sub-divided in thanas or police stations in charge of Thanadars who were assisted by a small body of 'burkundazes' or armed guards. Under the East India Company, Lord Cornwallis transferred the duties of Faujdar to a Company Officer who acted both as judge and magistrate. Lord Cornwallis also introduced Darogah system District was divided in police stations with a small posse of force with Darogah at its head—Darogah had to act under the orders of the magistrate, who continued to combine in his office functions of Superintendent of Police. In 1814 the Company decided to transfer police

8. Khera, S. S., District Administration in India, Pp 70.

ctions to Revenue Department, for to it collection of revenue was the end. This arrangement proved very unsatisfactory and the issue was even raised in British Parliament that revenue was being collected on the point of bayonet. In 1860, Police Commission was appointed to initiate Police reforms and reorganisation with an eye on cheaper police rather than an ideal police. The result was the Police Act of 1861.

The system of police organisation that we have today is based on Police Act, of 1861 and is one hundred twelve years of age. As pointed out by one of the most distinguished police officers of our country "there has been no serious rethinking since then".[9] Though some states had appointed police commissions to study the working of police in those states, efforts have not been rewarding, as rightly pointed out by Shri S. C. Misra 'except for making minor changes in the present police set up and suggesting some small adjustments in police procedures, have hardly defined the role and character of the police in the changed set up'[10].

The blue print for police today was prepared more than a century ago, and despite efforts at keeping it in safe coustody, by sheer passage of time and exposure to light it has lost its lustre, shine and colour. The philosophy of criminal administration is contained in section 4 of the Police Act, 1861 :[11]

> The administration of the police throughout a general police district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as the State Government shall deem fit.

9. "Police—A Force or Service" paper by Shri S. C. Misra, Director, C.P.T.C. Abu in Fifth Police Science Congress.
10. Ibid, Page 9.
11. Act V of 1861 (22nd March, 1861).

> The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.

Let us stand here and from this position of vantage first, survey the field and then attempt to tune the system, if we could, to the needs of today and tomorrow. There is enough reason for doing this. The recent P.A.C. revolt in Uttar Pradesh shocked the conscience of thinking people, and although, quite unfortunately, it could not transcend the party lines, it shall be judged as the biggest event in India's administrative history in the 20th century (till date). Necessity for reforms, like the gathering steam, may burst the frame, however strong, if not given a vent in time. Seething discontent, simmering feelings, intolerable suffocation and favourable wind might ignite the fuse in a holocaust of quite unexpected proportions and for this unexpectedness at a moment of least preparedness. This is the crisis of rapport—too complacency, too ivory-towerism, too much short sightedness and a casual approach to matters that required devout thought. Except on these premises it is difficult to explain P.A.C. revolt. This should be beginning of turning the lights inside and effort at a thorough check up everywhere in the country. If not done we shall have lost an opportunity; ignorance of such a warning can be at one's own peril.

What, then, is the scene today ? All collars are fitting rather too tight-white collar, blue collar, stiff collar. Students, labour, employees, seem to be in tentrums. Naxalism, communalism, and vandalism are coming to the forefront. The day you find your newspaper missing the news of University burnt, Vice Chancellor gheraoed, factories locked out, labour picketing, the morning tea becomes hard to relish. Such is the tragedy of living today. In fact it is having a doping effect on social

otficer has been termed as 'an agent of the law of the land, not of the police authority nor of the Central Government.[6]

There is another interesting angle that merits our attention even though it is somewhat theoretical in content. When one, talks of 'Administration of Law and Order' what precisely is meant by it ? Does it mean criminal administration or handling of 'law and order situation' ? Going a little further I would like to define the latter as under :

> "A situation resulting from a number of persons associating in an agitational manner creating conditions fraught with apprehension of breach of peace or involving actual breach of peace".

Thus a demonstration, procession strike, gherao etc. organised by political parties or any other segment of population like students, employees, labour etc. will constitute a threat to law and order even though these are not accompanied with violence. On the other hand, there is day-to-day dealing with crime, prevention, detection, investigation, prosecution etc. in accordance with the provisions of law. It is not without significance that the Police Act[7] states in its preamble 'whereas it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; it is enacted as follows :'

> "Evidently 'criminal administration' is a generic term covering law and order also. But what distinguishes a law and order situation from an ordinary crime situation is that large number of people are affected and the ordinary life in the street is hampered and even jeopardised. In the priority of things, therefore, a law and order situation must take precedence over all ordinary criminal work. 'Administration of Law and Order' will

6. Britain 1971—An Official Hand Book, Pp 107.
7. Act V of 1861.

mean criminal administration with special emphasis on law and order."

One of the senior civil servants has described six principles underlying law and order as such :

> "That law and order are an inseparable entity; that law and order must claim absolute priority; that the rule of law must prevail; that law and order must comprehend the safety of all, without any exception whatsoever; that law and order involves the sanction of force; that law and order can prevail only if the principle of civil supremacy prevails".[8]

It shall be illuminating how to view law and order administration in its historical perspective. During the Mughal period Faujdari system of maintaing law and order was in vogue. A Faujdar discharged executive functions within the limits of 'Sarkar' (the rural district). His position could will be compared with that of the District Magistrate in modern times with the difference that Mughal administration was mainly military in character and the Faujdar combined the functions of both the garrison commander and the Chief Police Officer. 'Sarkar' was divided in parganas or sub-divisions which were in charge of Siqdars. Parganas were further sub-divided in thanas or police stations in charge of Thanadars who were assisted by a small body of 'burkundazes' or armed guards. Under the East India Company, Lord Cornwallis transferred the duties of Faujdar to a Company Officer who acted both as judge and magistrate. Lord Cornwallis also introduced Darogah system District was divided in police stations with a small posse of force with Darogah at its head—Darogah had to act under the orders of the magistrate, who continued to combine in his office functions of Superintendent of Police. In 1814 the Company decided to transfer police

8. Khera, S. S., District Administration in India, Pp 70.

functions to Revenue Department, for to it collection of revenue was the end. This arrangement proved very unsatisfactory and the issue was even raised in British Parliament that revenue was being collected on the point of bayonet. in 1860, a Police Commission was appointed to initiate Police reforms and reorganisation with an eye on cheaper police rather than an ideal police. The result was the Police Act of 1861.

The system of police organisation that we have today is based on Police Act, of 1861 and is one hundred twelve years of age. As pointed out by one of the most distinguished police officers of our country "there has been no serious rethinking since then".[9] Though some states had appointed police commissions to study the working of police in those states, efforts have not been rewarding, as rightly pointed out by Shri S. C. Misra 'except for making minor changes in the present police set up and suggesting some small adjustments in police procedures, have hardly defined the role and character of the police in the changed set up'[10].

The blue print for police today was prepared more than a century ago, and despite efforts at keeping it in safe coustody, by sheer passage of time and exposure to light it has lost its lustre, shine and colour. The philosophy of criminal administration is contained in section 4 of the Police Act, 1861 :[11]

> The administration of the police throughout a general police district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as the State Government shall deem fit.

9. "Police—A Force or Service" paper by Shri S. C. Misra, Director, C.P.T.C. Abu in Fifth Police Science Congress.
10. Ibid, Page 9.
11. Act V of 1861 (22nd March, 1861).

> The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.

Let us stand here and from this position of vantage first, survey the field and then attempt to tune the system, if we could, to the needs of today and tomorrow. There is enough reason for doing this. The recent P.A.C. revolt in Uttar Pradesh shocked the conscience of thinking people, and although, quite unfortunately, it could not transcend the party lines, it shall be judged as the biggest event in India's administrative history in the 20th century (till date). Necessity for reforms, like the gathering steam, may burst the frame, however strong, if not given a vent in time. Seething discontent, simmering feelings, intolerable suffocation and favourable wind might ignite the fuse in a holocaust of quite unexpected proportions and for this unexpectedness at a moment of least preparedness. This is the crisis of rapport—too complacency, too ivory-towerism, too much short sightedness and a casual approach to matters that required devout thought. Except on these premises it is difficult to explain P.A.C. revolt. This should be beginning of turning the lights inside and effort at a thorough check up everywhere in the country. If not done we shall have lost an opportunity; ignorance of such a warning can be at one's own peril.

What, then, is the scene today ? All collars are fitting rather too tight-white collar, blue collar, stiff collar. Students, labour, employees, seem to be in tentrums. Naxalism, communalism, and vandalism are coming to the forefront. The day you find your newspaper missing the news of University burnt, Vice Chancellor gheraoed, factories locked out, labour picketing, the morning tea becomes hard to relish. Such is the tragedy of living today. In fact it is having a doping effect on social

nerves making them insensate to matters that should provoke a rightful indignation. Otherwise, why should the public, the citizen, watch the scene with unconcerned amusement or irresponsible participation. It is like enjoying cutting of the very branch one is sitting.

A survey[12] first of its kind, was recently undertaken of agitations in Rajasthan for first nine months of the year 1972. The results are very significant. Agitation for the purpose was defined as:

> "Agitation is a technique adopted by an individual or a group of individuals to build pressure on an authority—public or private—through attempts to directly or indirectly involve public or a section of public to yield to demands—real or imaginary".

During the period of study 114 agitations of different types and varying intensity took place in the state. This is subject to the condition that where one agitation covered more than one district it was counted separately for each district. These were accompanied with important ancillary activities like processions, meetings etc. numbering 244, thus making an impressive total of 358. These included 109 strikes, 67 processions and 21 bundhs.

There were 60 incidents of violence which included burning of buses, attacks on Police Stations and Post Offices, attacks on railways etc. Controverting the popular belief, police acted with restraint. Barely on three occasions police wielded *Lathi*, on one occasion tear gas shells and on one occasion two shots were fired without injuring anyone. The administration exhibited unusual firmness in not succumbing to undesirable pressures. This changed mode of handling agitations paid dividends. Most turbulent students agitation—medicos

12. A survey conducted by the author under the inspiration and guidance of Shri Ram Singh Home Commissiner, Government of Rajasthan.

agitation and University agitation, which continued for long fizzled out without achieving anything. The medicos agitation lasted more than two months and University agitation for more than $2\frac{1}{2}$ months.

Let us now have a feel of labour in a state which is industrially one of the most backward in the country. The number of agitations and incidents/events related to agitations totalled to 286 during the period of study (January to September, 1972). Some important agitations were Roadways agitation, R.S.E.B. agitation, and agitation in Khetri Copper Project. Khetri Copper agitation lasted for 42 days, when ultimately a settlement was arrived at, at the intervention of Central Minister of State for Steel and Mines.

Jaipur accounted for 101 agitations/incidents which is more than 33 per cent of the total score for the state. It is revealing to find that out of 274 days covered by the study, on 270 days one or more labour agitations/incidents were in currency in Jaipur.

How is a communal agitation like ? An agitation of controversy surrounding *Agni Pariksha*—a book by *Acharya Tulsi*, the head of Tera Panthi sect of Jain's engulfed district of Churu. It lasted for 38 days. In the final analysis 53 incidents were recorded during this prolonged agitation which included 15 strike, 11 public meetings, 15 processions, 7 *bundhs* (in important towns), 17 incidents of violence etc. It was only as a result of mediation by Shri Jai Prakash Narayan that this controversy was set at rest. Great heat was generated during the course of agitation and tempers rose high.

The truck-operators strike in July 1972 lasted for 13 days and paralysed all normal life in the state. Essential commodities were in short supply and public was put to very great inconvenience.

There were agitations by employees just before the general elections putting the Government to real test of nerves.

Dealing with an agitation builds up tremendous strain on the administration since there is always a danger lurking behind of social disruption. The task of dealing is delicate. Between the democratic right of expression of feeling and the inexorable necessity to maintain order, there is always a possibility of a spark igniting the fuse. Involvement of political parties makes the position really ticklish. On the chess board of power politics, public feelings aroused deliberately results in check-mate that may clinch the game. It calls for extraordinary qualities of forbearance, tact and patience in those on whom falls the mantle of dealing with such a situation.

Let us see the other side of the picture—the crime. It shall be fruitful to have a look at quinquennial crime[13] In Rajasthan :

Year.	Dacoity	Robbery	Murder.	Riots	Burglary	Cattle Thefit	Other Thefit	Other Misc. Offences	Total
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
1968	132	893	621	3132	7680	2144	7855	14544	37001
1969	130	859	669	3050	7078	1910	7172	14137	34995
1970	111	863	655	3381	6827	1830	7399	15164	36230
1971	100	956	555	4045	6319	1865	7059	15854	36743
1972	160	873	590	4627	6878	2021	7657	16298	36204

This is in addition to crime under special and local laws and proceedings under various provisions of criminal procedure code. Position of crime[14] under special and local laws for the year 1971 in Rajasthan will be revealed from the following:

13. Progress Report for Police Deptt., 1972.
14. Rajasthan Police Annual Administration Report, 1971.

	CASES
Arms Act.....	382
Opium Act.....	494
Gambling Act.....	947
Excise Act.....	768
Prohibition Act.....	103
Explosive Act etc.....	6
Suppression of—	
Immoral Traffic Act...	8
Indian Railway Act.....	317
Others.....	755
Motor Vehicle Act....	28055
TOTAL	31835

In the year 1971, complaints were lodged against 35688 persons u/s 107 Cr. P.C., against 4888 u/s 109 Cr. P.C. and 1310 u/s 110 Cr. P.C. A total of 57542 persons were arrested in I.P.C. offences only and 37387 persons were proceeded against under special and local laws[15]. This is besides other regulatory/preventive functions that police is called upon to perform day in and day out. Besides, V. I. P. visits demand extensive security arrangements. Safeguarding the border and keeping the internal security under watch are very important functions that police is called upon to discharge. Overseeing all these different activities at a glance one is impressed by the mass of activity that police is called upon to undertake.

Police in Rajasthan has a pyramidical structure constituting of following ranks[16] :

Inspector General.....	1
Additional Inspector General	1
Deputy Inspectors General....	10
Superintendents of Police.....	40
Additional Supdts. of Police	56

15. Ibid.
16. Progress Report for Police Department, 1972.

Deputy Supdts. of Police.....	147
Inspectors.....	283
Sub-Inspectors & Asstt. S Is.	2486
Head Constables.....	5002
Constables.....	29492

Apart from Police Headquarters, Criminal Investigation Department, Rajasthan Armed Constabulary, Government Railway Police, Police Training School, the police force is divided into 5 ranges, 27 districts (includlng Railway Police), 104 circles, 496 police stations and 753 out posts[17]. There are other agencies like Forensic Science Laboratory and State Police Wireless Organisation.

The cost of keeping this police was Rs. 12,81,18,800 during 1973-74.

This synoptic view of police—the chief agency of law and order administration—gives a general idea of its organisation in a state. Though this relates to police in Rajasthan, this is the general pattern followed in almost all the states in the country. With specialised central Government agencies like Integellince Bureau, Central Bureau of Investigation, Border Security Force, Central Reserve Police, Industrial Security Force, etc. some idea could be formed of the police organisation in the country as a whole.

Having come thus far, we should pick up the threads of our theme from section 4 of the Police Act 1861 referred to above and consider what are the problems that have been thrown up in the churning (if the thought process could be believed to the process of churning) and what, if any, could be the possible solutions.

The first thing that strikes an observer of Indian administrative scene is the existence of magistracy and police side by side in a working relationship that defies an easy comprehen-

17. Rajasthan Police Annual Administraation Report, 1971.

sion. To my mind, this is something unique to this country. Reasons have to be traced back in history.

The office of the Collector was for the first time created by Warren Hastings on 14th May, 1773. Office of the Faujdar—an important potentate in Mughal system—was abolished in 1781 and their police functions were transferred to the Judge. In 1787, Lord Cornwallis created the office of the Collector possessing the powers of Civil Judge and Magistrate. In 1973 Lord Cornwallis resorted to the classic division of powers with separation of the judiciary from the executive. It appeared illogical to him, that the officer responsible for collection of revenue should also hear complaints against that assessment.

According to the arrangements made in 1831 the Collector discharged all functions of the Chief Executive Officer of the district including collection of revenue, administration of lower criminal justice and maintenance of law and order; and the Civil Judge performed civil judicial duties.[18]

Bird Committee (1838) in Bengal had arrived at the conclusion that 'too great a burden had been placed upon the shoulders of the District Officer'. Halliday, a member of this committee was of the confirmed view that function of controlling the police should not be combined with that of criminal justice.[19] Changes were accordingly effected and in 1857, every district had a Civil and Sessions Judge, a Collector and a Magistrate.

Madras initiated reforms after the publication of Torture Commission Report and proposed that the police force should be under the exclusive control and management of their own officers. 'It had been the original intention of the Government of Lord Harris (in Madras) to deprive the Magistrate of all executive control over the police, but before the bill was

18. Transactions series Vol. VIII, Central Police Training College, Abu, Thoughts on Police Reforms.

19. Roy, N. C., Civil Servive in India, Pp. 22-23.

passed, Sir Charles Trevelyan became the Governor of Madras, and it was decided that the Superintendent should be placed under the orders of the District Magistrate'. Almost by accident the whole context was changed and the draft bill enacted as Madras Police Act 1859 contained this change. It became the model for Police Commission of 1860. The commission observed that the District Superintendent of Police was also bound to obey the orders of the District Officer in all matters relating to the prevention and detection of crime, preservation of peace etc. (Proposition 24).

It is quite interesting to note that a sort of unification in functioning of magistracy and police was obtained by appointing civil servants at the head of police organisation. The Police Commission of 1902 had opined that the office of the Inspector General of Police, who is the departmental head of the police force, should, for the present, be ordinarily held by a District Magistrate, though thev did not envisage that the door should be absolutely closed against the officers of the Police Department. However, they felt that ordinarily the training of a member of the civil service fits him better than a a police officer to take broad views of administrative matters and to deal with intricate, difficult and important questions.

It is very important to notice that the question of what, if any, should be the correct equation between magistracy and police, has been debated, for more than 125 years. As at present, the District Magistrate is the pivot on which law and order administration has always revolved. Subjecting this question to a further scrutiny would be rewarding.

What are the 'pros' of this question ?

1. Training of a civil servants fits him better to take broad views of the administrative matters and to deal with intricate, difficult and important questions.

2. Historic necessity. The collection of revenue in the early days of British administration was the main task and needed force at the disposal of the Collector.

3. The true theory of the Indian Government is the entire subjection of every civil officer in a division to the Commissioner and the entire subjection of every executive officer in a district to its executive chief.

4. It is inexpedient to deprive the police and public of the valuable aid and supervision of the district officer.

5. The district officer as the symbol of rule must represent the sovereign power, must be a sole ruler in his locality.

6. The training, experience and outlook of the police force was such that it was good for a non—technical general administrator of the position and status of a district officer to exercise control over the police even in what might be called its internal economy.[20]

7. Inferior quality of some Superintendents and the reckless and irresponsible manner in which they exercised their functions as head of the police.

8. District Magistrate is 'a connecting link'[21] between the magistracy and police.

9. In abnormal times, however, when the general law and order situation completely breaks down or communal rioting is abroad, combination of magisterial and executive powers is of considerable advantage.

10. A disciplined force tends to become rigid if left to itself and there is need for healthy, restraining and liberalising influences.

---

20. Roy, N. C., Civil Service in India, Pp. 27.
21. Police Commission 1902-3.

11. The District Magistrate acts as a shock absorber between police and the public.

12. The present system has stood the test of time.

13. The time is not ripe for the police to be free from the control of the District Magistrate.

14. By the abolition of magisterial control, the police are not going to exercise more powers than they are at present.[22]

15. Control of the District Magistrate helps in checking the abuse of powers by the police.

16. District Magistrate enjoys greater confidence of the public.

17. Prefect system in France, bears some resemblance to the magisterial control here. The system there is working satisfactorily.

18. District being the unit of administration, the District Magistrate is in the position of coordinator and oversees whatever happens in the district.

19. An I. A. S. officer is selected through a clearly superior examination.

20. Police is repository of power of the state and power corrupts. There is need for appropriate checks.

Considering 'cons' of the question the following position emerges :

1. The relationship between I. A. S. and I. P. S. officers at all levels does not appear to be cordial and cooperative.

2. Trust bagets trust, trust your policeman.

22. Bihar Police Commission's Report, Pp. 151.

3. Task of police force is becoming increasingly complicated.

4. Function of controlling the police should not be combined with that of criminal justice. A Thief catcher must not be responsible for tryrng him as well. [23]

5. It is a matter of common experience that cases of preventive action are delayed in the executive magistrate's courts with disastrous consequences in some cases.

6. In many districts, Additional District Magistrates are in charge of criminal administration.

7. With his multirarious duties, District Magistrate has no time or energy to devote to police work.

8. In any ticklish situation District Magistrate will refuse to take a decision except on a police report.

9. In case any thing goes wrong the District Magistrate will try to save himself on the ground that he was acting on the police report.

10. In cities headed by Commissioners of Police law and order situation has been handled better.

11. District Magistrate's control is indicative of want of confidence in Superintendents of Police.

12. The institution of magistracy, linking execution with judiciary can be rated effective only on the assumption that justice is subordinated to expediency, and is subject to 'invisible controls' an ignorable apology to rule of law.

13. The real control on police should come from the citizen —enlightened public opinion.

---

23. Bird Committee in Bengal, 1838.

14. The dual control demoralizes the force.

15. The police administration has come to assume a highly technical character.

16. If Superintendent of Police is made solely responsible for discharge of his duties, it will enhance his initiative, drive and efficiency.

17. The fundamental and basic qualities and qualifications of a man who takes up I. P. S. and I. A. S. course are the same.

18. With democratic decentralisation and advent of effective Zila Parishads, District Magistrates control over administration will gradually diminish.

An analysis of the two impressive lists will show that several points in both the lists could be stressed with equal force by their protagonists. Let us, however, try to remove the cobweb of arguments and see with a clearer vision. It is a fact beyond argument that the District Magistrate has occupied a position of pre-eminnce in the district for more than a century and with passage of time has only consolidated his position. His general control has in fact been a control in depth; in many places he initiates the A.C. Rs. of the Superintendents of Police, transfers and postings of S.H.Os. have to receive his approval before being implemented. He inspects police stations and also deals with complaints against police. Police Manuals in many states have referred to Superintendents of Police being District Magistrate's 'assistant for police duties' and 'bound to carry his orders' etc. Thus, by acquiescence the scope of 'general control' has been extended considerably.

Objectives of administration under foreign rule were only limited. Law and order should be maintained so that they could exploit the riches of the country. With independence the whole context changed and now the goal was nothing

short of welfare of the whole populace. District being the unit of administration and Collector the key figure, his role has tremendously increased and his duties have multiplied amazingly fast. It is time now to free him of burdens that he should not carry. Police today is a well organised body working through a hierarchical structure. The necessary checks and balance needed for counteracting the corrupting influence of power have been inbuilt in the structure itself. Under the circumstances, what is the role of Collector ? In relation to crime none; in relation to law and order (agitation) yes. Disturbance of order presents a situation which is, because of public and political involvement, very delicate and sensitive. Secondly, it has a transcendental effect in that all other activities come to a stand still. However, competent one may be there is always an advantage in having the advice of an agency which is outside and yet has an identity of aim—restoration of peace. He can truly act as an adviser, friend and guide. There is another reason. Since in a situation like this police comes before the public as wielder of force and direct target of attack in their attempt to attack the Government, the Superintendent of Police being too intricately involved could sub-consciously be swayed by consideration not strictly warranted by the situation. District Magistrate, on the other hand could by virtue of his position, be the focal point of people's attention and thus could exercise some salutary influence.

It should be recognised candidly that the Collector will continue to occupy a position of pre-eminence in the district. He is one person who could act as a coordinator of multifarious activities undertaken by a number of departments in his district. This granted, even so, as stated above, his role in Law and order administration needs be redefined. He does not have a role in crime control and organisation and discipline of the force. He has an important role to play in maintenance of law and order. Separation of executive from judiciary is

Police Commission which should constitute of eminent administrators, police officers, public figures, educationists, sociologists and criminologists—the last police commission was perhaps the one in the year 1902. After independence we have had Police Commissions in U. P., West Bengal and Bihar, but there is an inexorable need for appointment of such a Commission for the country as a whole as the problems are complex, issues important and need to subject the whole law and order administration to a close scrutiny indeed great. The commission should have wide term of reference and should work out a blue print for modern police force in the country.

Next I propose that police be made a plan subject so that any attempt at improvement may not be stifled for want of funds. That this should be so is warranted by reason. Rapid industrialisation, urbanisation, communication revolution have lent complexity to law and order scene in the country. Another angle, greater security will ensure greater development. If development activities are plan subject, security on which it so fundamentally hings, must be so.

Next I propose that there should be a high leval Research and Planning Organisation in the Home Department. In Britain, there is the Home Office Police Planning Organisation charged with the planning of Police methods, the development of new equipment and the study of new techniques. A considerable amount of the work in which the organisation is engaged involves the use of operational research techniques.[24]

Next I propose that there should be a massive attempt at educating public about the working of Law and Order agencies. The best guarantee of a clean and efficient administration is an enlightened citizen. With public cooperation

24. Britain 1971—An Official Hand Book, Pp. 107.

readily forthcoming great strides can be made in effective management of law and order administration. Besides short range devices, we should have long range planning. It is of utmost importance that we should educate young children today so that they become responsible and responsive citizens tomorrow.

Lastly, I propose that there is a need for induction of police officers in Secretariat. The expertise so available at the highest policy formulation level will prove invaluable in building up efficiency and pragmatism in approach. Study Team of Administrative Reforms Commission has also strongly advocated this suggestion.[25]

In a Nut Shell

In the course of our march through these pages several questions were thrown up and some solutions suggested. It shall be useful to summarise them briefly here :

1. Though the Collector has no role to play in crime control, organisation and discipline of Police force, he has a role in maintenance of order.

2. Create Indian Police Administrative Service in place of Indian Police Service.

3. A system of lateral entry from I. P. S. to I. A. S. be devised.

4. An All India Police Commission be immediately set up.

5. Police be made a Plan subject.

---

25. Report of the Study Team on Machinery of the Government of India and its Procedures of Work, headed by C. D. Deshmukh.

6. High level Research and Planning Organisation be set up in State Home Department.

7. Massive attempt be made to educate public about the working of law and order agencies.

8. Police officers be inducted in Secretariat Organisation of the State Government.

Maintenance of Law & Order : A Plea for Specialisation

N. K. Sethi

Maintenance of order is the first condition for the working of democratic institutions. Rule of law can survive only when a citizen respects the law and its supremacy is recognised by the people and the society. In a developing country while developmental administration is the need of the day, we can not brush aside the importance of law and order administration.

"Development is implicit in survival and survival has to be a pre-condition if the society is to develop and progress."[1] The concepts of welfare state, socialistic pattern of society, rapid industrialisation and above all the adult sufferage, have all contributed towards the rising aspirations of the people in our country.

1. P.D. Sharma,"Law and Order Administration in India," *Indian Journal of Public Administration*, XVII (Oct.-Dec. 1971), 754.

The Indian scene in the recent years, however, presents a very ugly picture. There seems to be a wholesale mass violence and anti-authority bias generating everywhere. The instinct towards violence is growing every day. Demands and grievances ranging from cancellation of examinations, bringing about changes in heads of organisations including Universities, formation of separate States, toppling of democratically constituted governments and above all looting and destroying of properties are some of the activities which suggest the trend to which our society is going. Frank Moraes commenting on country's law and order situation had written : "There is government in India but there seems to be no administration. The rule of law is accompained by reign of disorder.....Riots, violence, disorder, indiscriminate police and military firing, student upsurges and communal clashes are the daily staple of news from areas as far removed from each other as Assam & Punjab. A climate of violence is growing in the country."[2] Above everything else, everybody now feels that agitations are always rewarded and that nothing short of a violent agitation is going to get any wrong redressed. David H. Baylay in his study about Indian Police has established that : "As a general rule, the public continues to believe that demonstrations are a useful way of compelling official attention. For example, when they were asked whether demonstrations were useful in getting the authorities to do the right thing or correct some wrong, approximately half of the urban samples said they were useful."[3] Earlier agitational approach was considered to be the sole monopoly of labour unions and students. But now the senior officers in the government also compete with their younger and junior brothers and go to any extent in disturbing the maintenance of law and order. The strike by electrical engineers in

2. Frank Moraes, "Law and Order," *The Indian Express*, October 16, 1972.

3. David H. Baylay, *The Police and Political Development in India* (Princeton, New Jersey: Princeton University Press, 1969).

U. P. and Rajasthan, the strike by Medicos in Rajasthan and the recent 96 days strike of Junior Doctors are the examples of this growing trend. The worst was seen sometimes back when the men of Provincial Armed Constabulary in U. P.—the protectors of law and order—joined hands with rampaging students of Lucknow University and revolted against the established traditions of law and order, and again when the Nav Nirman Samiti in Gujrat was successful in getting the Gujarat Assembly dissolved. Girilal Jain has summed up the country's mood when he says : "Even in a country where the ruling party has generally been tolerant of criticism, and many a forum are available to ventilate one's grievances, the upsurge is quite visible. Actually it is a crisis of confidence. All in all the country is facing a crisis of confidence not only with efficacy but also in the legitimacy of the present system."[4]

Types of Agitations

There are certain violent agitations which have assumed a type of their own. Firstly, there are political agitations which are led by opposition parties with a view to ventilating people's grievances. Although in a democratic set-up, it is the established right of a political party to change the government by peaceful means and political agitations are one of their patent tools, we do find that most of these agitations which were quite peaceful at the time of their start became violent and the organisers soon lost their grip over the agitations.

The second type of violent agitations come from the students. Students of a free democratic country have every right to formulate their own views on problems which face them in the University or the problems that face the country. It is a different matter whether they themselves organise their agitations or that other organised agitators help them in organising

4. Girilal Jain, "A Crisis of Confidence what Gujrat Signifies," *Times of India*, March 20, 1974.

their agitations, but the student agitations are getting very common.

The third dimension is of labour agitations. Labour unions with ample support from the ruling party in the beginning and then from the opposition parties have always found it to be convenient to agitate for their demands. They have known clearly that in agitating they lose nothing and their gain is tremendous.

Communal riots may also pose a peculiar problem for the authorities concerned with law and order. On small matters, when they are not handled properly, the communal feelings develop and result into communal conflicts, which ultimately go to destroy the communal harmony which may have been brought about by hard efforts over the years.

Two important trends emerge out of the situation explained above. Firstly, with the passage or time, the growing factors of instability and disintegration will bring out a situation in which violence and conflict among competing sections of society will be more vocal. Secondly, with the wide spread distribution of developmental gains and guarantee of economic security to the backward classes and downtrodden sections of the society, the disruptive forces will assert themselves more violently as a part of democratic stir. The situation suggests that the authorities concerned with law and order to-day face challenges without precedent. 'The balance of power within our society has turned dangerously against the peace forces. The fighting of this balance is the primary business of each community and the nation'.[5] Therefore, the law and order administration in India must necessarily equip itself with the requisite perspectives to face and counteract the impending challenges of tomorrow. It should be realised that the law and order authority cannot afford to act merely

5. Water Lipman, "Selma : Background to Campaign Against Crime," *The Indian Express*, March 19, 1969.

as 'visiting firemen' or 'parachute jumpers'. When there is a danger to the life and property of the citizen of a free country, it is necessary that a comprehensive view is taken on the whole issue.

Rajasthan is said to be comparatively a peaceful state in the country, and if we have to put up comparisons between West Bengal and Rajasthan, or U.P. and Rajasthan or today's Gujrat and Rajasthan, this seems to be a correct assessment. But even in this state, the trend which is prevalent in the country as a whole is finding its entry. Rajasthan and particularly its capital city can hardly claim a completely peaceful quarter.

It is, therefore, important that the authorities concerned with maintenance of law and order read the writings on the wall and start making necessary preparations for tackling all possible situations in this direction. The present situation of the country has been correctly assessed in the following words: 'After two decades of independence, the situation has not changed much and the police methods of detection, confrontation and prosecution remain largely archaic. There is very little dialogue between the police and the people on common questions. The terms 'police research' and 'police public relations' have come in use so recently that even very senior decision makers and policy framers have their genuine hunches about their utility. The lack of timely communication among the different cadres of police and between the police and its clients is a hazard which in several cases is itself the source of grave provocation for lawlessness and disorder.'[6] Modernization of police administration is, of course, a dire necessity. As the problems stand today 'professionalisation of the police service' as also 'professionalisation of the magistracy' is called for, because only highly professionalized

6. For details, see P.D. Sharma, *op. cit*, p. 758.

persons will be able to cope with the complicated problems and societal pressures that accompany unrest, violence and crime.

It is quite well known to be repeated here that the prime responsibility of the maintenance of law and order rests with the police and the magistracy. The partial separation of the judiciary from the executive which was brought about in 1962 and the new Cr. P. C. of 1973 which has come into force from April, 1974 have left this responsibility with the executive functionaries. By virtue of the Criminal Procedure Code, 1973 most powers have been passed on to Judicial Magistrates—Magistrates who would be working under the High Court. Only a few sections have been left with the Executive Magistrates—who will continue to work under the District Magistrate. Broadly speaking, functions which are essentially judicial in nature will be the concern of the Judicial Magistrates while functions which are 'police' or administrative in nature will be the concern of the Executive Magistrates and thus the responsibility of maintenance of law and order is still with the Executive Magistrates—which has to be discharged by the District Magistrate, the Additional District Magistrate (wherever they are), the SDMs and other subordinate Executive Magistrates. It is needless to mention that the executive wing of the government shall discharge this responsibility only in close collaboration with the police.

Although many things have to be tested on the touchstone of time and many confusing situations—that generally come about whenever there are changes in the administrative set-up—will have to be clarified, yet it is important to assess whether the existing set-up responsible for maintaining law and order will prove equal to the challenges that we must face in the foreseeable future.

It is generally accepted that harmony, cooperation and co-ordination in the two sets of functionaries shall bring about

the best results. Personal contacts by meetings, consultations and joint tours by the District Magistrates and the District Superintendents of Police have always been recommended by experienced administrators as tools for bringing about the desired co-ordination. Without belittling the importance of what has been suggested above, it is necessary for us to appreciate whether such a co-ordination is possible both at the district level as also at the sub-divisional level.

The Case of Jaipur City

Let us take the case of Jaipur city to find out whether it is equipped with the necessary strength of Magistrates to tackle problems dealing with law and order. Even about our country's capital, it is said that Delhi Police is handicapped in many ways. With a population of over 4 millions it has only 18 Wireless Patrol Vans, while London with a population of 7 millions has 317. When this is the state of affairs in our country's capital, the Rajasthan's picture can not be any better. The reports suggest that in 1973 Rajasthan witnessed 449 agitations, 32 of which had gone violent. Jaipur being the capital of Rajasthan had to face majority of these agitations. As the trend goes, the number of these agitations is likely to increase year by year. To cope with agitations, we have five Executive Magistrates at Jaipur, who are also required to attend to many other types of duties including disposal of revenue cases. These magistrates have 4 years of experience on an average of handling such agitations. It is, therefore, necessary to study the possible implications of having almost amateurs in handling law and order situation in the capital city of Jaipur.

The persons required to handle law and order situations must have worked in the past in various capacities and must have handled very intricate problems, yet the fact remains that one may not necessarily develop expertise in handling situations of a variety of types. Even if an individual has worked for

5 to 7 years as a Magistrate, it should not be expected of him to have developed any expertise in handling a particular type of law and order situation. The bane of the present system is that a person is hardly allowed any time to develop expertise in a particular area and is transferred to other positions for the sake of maintaining impartiality in administration. In today's context, it has become necessary to emphasize that unless law and order enforcing agencies are trained to make a correct assessment of different types of crowds and mobs, their ideologies, motivations and *modus operendi*, it would be difficult for them to take suitable action appropriate to the occasion. Not only specialised intensive training to the Magistrates and Police Officers in handling mob violence is necessary, it is also necessary that the government's personnel policy allows the trained officers to continue to use their expertise over a sufficient period of time.

Need of Greater Specialisation

To take once again the specific case of Jaipur city, it should be realised that it will be worthwhile to divide it into certain zones and each zone should be placed in the charge of an Executive Magistrate for maintaining order and and peace in his area.

The District Magistrate and Superintendent of Police, who have overall responsibility of maintenance of law and order in the district, may be too busy to attend to it since they are expected to look after many other responsibilities also. Today they devote most of their precious time to this area for the simple reason that they find it difficult to depend entirely on their subordinate officers. The officers directly responsible for maintenance of law and order are not experts and have had no chance to earn specialisation in any particular branch of maintenance of law and order. When the District Magistrate and the Superientendent of Police have to work with teams of amateurs, it is quite natural for them to devote far greater

time and energy in sorting out issues related to law and order maintenance.

Of course, a section of people is suggesting that new types of punishments should be brought on the Statute Book. J.S. Rama Sarker[8] has suggested that 'new types of punishment will be necessary for those who break the laws..... imprisonment or fine.....is not enough to check modern group crimes. New methods should include : loss of political or economic rights, forfeiture of property, cancellation of trade or other licences, social ostracism from state or public function and compulsory winding up of dishonest firms and illegal trade unions. These will be more effective in preventing crime.'

But the immediate question still remains whether the administration can depend on the amateur Executive Magistrates for maintenance of law and order which has assumed such a vital importance today. The obvious answer will be in the negative. But the trend of administration for tomorrow demands that the District Magistrate and the Superintendent of Police be made responsible for providing the much needed leadership to the lower functionaries leaving much to be done by them.

The time has come when the personnel required to work in this areas of administration develop specialisation in handling certain types of situation. There should be more emphasis on developing the mind rather than the muscle. Training in specialised area and helping the officers to develop expertise will be the only answer to this problem. To carry this point further it would be worthwhile to suggest that an Executive Magistrate and his counterpart in the Police Department, having jurisdiction over the University areas should develop expertise in handling student agitations. He should have more

8. J. S. Rama Sarker, "The Problems of Law & Order—Need for New Measures and Penalties," *Statesman*, 14 Feb., 1972.

knowledge than an average administrator of student psychology. He should have a more intimate knowledge and understanding of the area, peculiarities of the approach of student leaders, their problems and *modus operendi*. If the Executive Magistrate and Police Officer dealing with the student community and their problems have expertise in handling the students, there can be hardly any negative opinion about their being more functional. This approach should be applied to the problems related to labour as well as political agitations. The persons responsible for tackling labour agitations will function better if they know the intricacies of the labour laws and the working of the labour unions. The persons dealing with political agitations will do well if they know how to deal with political leaders whether they belong to the party in power or to the opposition group. A tactful handling by an experienced Magistrate have saved many a situation from turning violent and a poor handling of a situation by a young and unexperienced Magistrate—who had had no experience of the working of democratic institutions—has turned peaceful demonstrations into violent agitations.

The point made above suggests that more emphasis should be given to development of expertise and skills in various sub-specialities. It is time that lessons are drawn from medical science where specialisation is the order of the day and more investment is made on helping certain selected persons both in the general administration and the police to learn new skills and earn specialisation and expertise. The government will also do well to develop a career management scheme for such personnel and thus earn dividends from the investment it has made on acquisition of certain specialised skills by its employees.

Imperatives of Law and Order Administration

J. C. Kukkar

The maintenance of law and order is central to any administrative set-up. As has been said time and again, if people are to live in peace, there must be laws. However, the laws to be effective must be definite, and they must be comprehensible to the people for whom they are made and to those entrusted with their administration. Further, no law can command respect if it is not just. In India during the former times the king was expected to rule according to *Dharma*, that is, just laws. At no time was a king allowed to call himself the state or to claim divine right to misgovern.

Popular sanction has been regarded as the basis of law by most jurists and political scientists in all times. According to Thomas Acquinas, 'all political authority is derived from the people, and all laws ought to be made by them or by their own representatives. There is no security for us so long as we depend upon the will of the other man.' In no country, respect for law can be taken for granted unless the law is based on justice and equity and is acceptable to the majority of population.

Another striking feature in point is that law and order are inseparable. No law can prevail unless there is order, and order cannot prevail unless it is based on law. In effect, an order without the sanction of law is the very negation of the rule of law which is opposed to the use of arbitrary power. Other characteristics of the rule of law which are pertinent to the present discussion are : first, it provides for the equal subjection of all classes to the ordinary law courts; second, every person, official or otherwise, is subject to the same law, and third, the verdict of a court of law is final and no executive can upset it. For the effective functioning of democratic institutions in a country these principles should form the basis of its law and order set-up.

II

The organisational pattern of the various agencies concerned with law and order administration differ from country to country. In India, the law and order apparatus primarily consists of the magistracy, police and judiciary, although, the military, and the citizens too have a role to play in this regard.

In a district, the district magistrate and the other magistrates are responsible for the prevention of crime, for the maintenance of peace and order with the assistance of the police, and if necessary, with the assistance of the military. There is a close liaison between the magistrates and the police officials at every level in the district, starting with the district magistrate and the superintendent of police at the top. An important feature of the law and order administration in a district is the overriding control of the district magistrate over the police organisation. This has been provided for in the Police Act of 1861. The district magistrate is ultimately responsible for law and order in the district and exercises control over the police of the district for its deployment and use. A system of dual hierarchy and dual supervision—'administrative' and 'technical'—thus exists in the field of criminal administration in a district. The superiority of the general administrative

hierarchy over the technical is the basic principle on which this system rests.

However, there is a controversy regarding this principle of dual control of law and order administration and problems of magistracy-police relationship. There is ample support both for and against the status quo. The supporters of the status quo argue that the existing arrangement 'has stood the test of time and has functioned satisfactorily'. Another argument is that 'the district magistrate has more intimate contact with the public and functions as a shock absorber between the police and the public'. The district magistrate, they contend, because of his judicial background of some kind, his executive experience and his greater awareness of the socio-political forces in the country, possesses a better perspective of the rights of the people guaranteed in the Constitution. Other arguments put forward by the status-quoists are: first, the district magistrate co-ordinates the activities of the various departments connected with the criminal administration of the district; second, the district magistrate through his general control over police exercises a liberal and humanizing influence; third, due to his close contact with the people of all sections of the community, he acts as the 'custodian of general interests' of his area and looks at the problems of criminal administration from a much broader angle; fourth, as the chief representative of the government, he can claim precedence over all other district level officers, including the superintendent of police; and finally, maintenance of law and order is his statutory responsibility and, hence, he should be given in full measure, the confidence, trust, loyalty and support of the police organisation.

These arguments have, however, been contested by those who are opposed to the present system. They are of the view that the provisions of the Police Act of 1861 were designed to meet the situation following the 1857 revolt and as they are out-dated, they should now be scrapped. Even when the

bill was being discussed in the Legislative Council, the then Home Member admitted that in principle the police should be independent of the magistracy but defended the proposed arrangement as it was a compromise necessary under the circumstances. Another important factor in perpetuating the system, according to the advocates of change, is the role of generalist administrators. These civil servants, who have always exercised tremendous influence in the Government of India, are vehemently opposed to the idea of making the police independent of the control of the district magistrate. The argument about the Collector's role as a co-ordinator is also challenged on the ground that power to command is neither a prerequisite, nor even an essential concomitant of the ability to co-ordinate. It is considered as a gross exaggeration of the importance of the co-ordinating role of the district magistrate and in this context they cite the example of the Central Government departments which have all along been functioning without any co-ordinator at the district level. As regards the plea that the district magistrate's control should be retained because he acts as a buffer between the public and the police due to his 'liberalising and humanising influence', it is argued that for the creation of healthy relationship between the public and the police a buffer is good for neither. Moreover, with the separation of the judiciary from the executive the control of the district magistrate has become almost redundant. Their contention, therefore, is that the present arrangement of dual control introduces a chaotic element into the law and order administration and a division of command leads to poor morale and lack of efficiency in the police organisation.

In this controversy, however, one should take into consideration the fact that magisterial control over the district police, as a principle, got statutory recognition over a century ago and the system continues without any change even today. This reflects an intrinsic merit in the system which has

remained unaltered during the past hundred years. It may, perhaps, be unrealistic to describe such a system as a 'temporary expedient'. The principle has also been supported by several commissions of inquiry that have gone into this question in the recent past. The plea that with the separation of the judiciary from the executive, the police functions of the district magistrates should also be separated is also not tenable. In the separation of the judiciary from the executive, what has actually been separated is the power of trial of criminal cases. The control of the district magistrate over the executive magistracy has, however, been left intact and through this control he still exercises general supervision over the law and order administration in a district. We have, therefore, to examine whether in this field his control of the police is of any advantage.

In a democratic set-up, maintenance of law and order often involves issues pertaining to the fundamental rights of individuals. For instance, the right of peaceful demonstration is guaranteed by the constitution. But, at what stage does an agitation cross permissible limits and become a danger to the maintenance of law and order ? A decision in this regard can best be taken by an authority, who is not directly involved either as a participant in the dispute or as the agency which may have to put down the agitation. On the one hand it is likely that the police may look upon this problem primarily from the angle of preserving public order, and thus may give secondary position to the issue of the protection of civil rights. On the other hand, the agitators would be more concerned about their right of peaceful agitation without bothering for its consequences on the law and order situation. In such situations there is need for an authority which may maintain an equilibrium between the two extreme positions and take a decision on the extent to which a peaceful agitation may be allowed before it degenerates into a law and order problem. There is no denying that the district magistrate, because of his judicial and executive training, sources

of information, contacts with various sections of society etc., is in a better position to perform this role.

It would, therefore, be advantageous to retain the status quo at least in regard to law and order administration. This is no aspersion on the ability of the Superintendent of Police to undertake these tasks. All that is intended is an arrangement, in which final decision in law and order matters rests with a functionary who, due to various factors, is in a better position to shoulder this responsibility than the Superintendent of Police. This controversy can, however, cause a lot of harm and create unhealthy rivalry between the two important agencies concerned with law and order. A process of demoralization has already set in among the services as a result of this dichotomy. Unless this process is reversed, the danger is that the administration may loose its grip over law and order. One suggestion for putting an end to this controversy could be to clarify the exact relationship between the district magistrate and the Superintendent of Police. This would help in minimising areas of conflict between the two main functionaries concerned with law and order administration. This clarification relating to their roles is not only needed at the district level, but also at the sub-divisional level. As present the sub-divisional officer's role remains ambiguous in regard to the police organisation in the sub-division. Such a situation hampers the effective functioning of law and order agencies at the lower levels.

Another agency concerned with law and order consists of the courts of law. In many ways the courts of law exercise an authority which prevails over every other agency concerned with law and order. The courts of law under the Indian Constitution form a fairly tightly-knit pyramid. The Supreme Court is the highest judicial forum in the country. A High Court exercises full jurisdiction in each State, but subject always to the ultimate jurisdiction of the Supreme Court. In the district, the district judge is closely concerned in several

ways with matters relating to law and order. He exercises both original as well as appellate jurisdiction over all the judicial work of magistrates and other judicial officers. He receives the annual criminal report of the district submitted by the district magistrate. He comments upon the judicial work of each magistrate and judicial officer. The magistrates, who in their judicial capacity are more directly concerned with the maintenance of law and order, also themselves constitute courts of law, and come directly within the judicial pyramid. At the sub-divisional level, the sub-divisional magistrate sits as a court. Even after the separation of the judiciary and appointment of judicial officers, the sub-divisional magistrates continue to try cases under what are known as the preventive sections of the criminal procedure code. These are the sections which deal more directly with the preservation of law and order. Similarly, the other magistrates in the district have their powers defined in the criminal procedure code. Besides dealing with law and order situations, they also sit as courts of law.

The armed forces also have a role in the maintenance of law and order. They may be used in the aid of the civil authorities in certain circumstances. It, however, does not imply that the armed forces directly take over the responsibility for the maintenance of law and order in such a situation; they merely come to the aid of civil power and, that too, at the request of the latter. As the armed forces are under the control of the Central government, their use in aid of civil authorities involves the permission ofthe Central Government. The civil authority empowered to call in the military is often the district magistrate, but in case of need any magistrate on the spot may request the military to come to his aid in dealing with an unlawful assembly.

III

In our country, the greatest challenge to law and order emerges as a result of an increasing trend toward group

violence. A cursory look at a daily newspaper would give an idea of the extent of lawlessness prevailing around us. A climate of violence is thus growing throughout the length and breadth of the country. Riots, violence, disorder, student upsurges and communal clashes are the daily staple of news. There have been attacks on the educational system and institutions. Even national leaders or their statues have not been spared. There is a revolt not only against law and authority but also against society and its ideals. Needless to say, the rule of law cannot operate in a society that is beset with disorder. These chaotic conditions can endanger the very existence of any polity and more particularly of a nascent democracy like that of ours.

Group violence in India could be categorised in three broad categories pertaining to educational, politico-economic and communal issues. In regard to the dangers of 'studentocracy' much has been said and written with a view to analysing the causes of campus unrest. Student indiscipline is rooted in the socio-economic conditions of an underdeveloped country and as such it needs careful handling by educationists and politicians alike. It would involve undertaking long term reforms and a search for short term solutions. Educational authorities, however, are often weak and vacillating, seeking cheap popularity among students. Edward Shils, in one of the articles on Indian students, has noted this weakness in the Indian University, when he writes :

> The hesitation of university and college authorities to respond to often legitimate student desires, and their sometimes cowardly alacrity to yield when threatened with open indiscipline, further discredit these authorities. The remoteness of this weak authority, its bureaucratic impersonality, its lack of convictions as to its own validity, do not satisfy the need of the Indian youth for

a unitary, immediately present, integral and morally pure authority.[1]

The law and order authorities are often helpless in such circumstances and when the police is called in to save a situation, it only aggravates it for the latter enjoy no better reputation with the student community. In the politics of agitation nothing succeeds like success and the Indian student has realized the power of collective action. In the context of educational crisis in India, therefore, the university authorities as well as the law and order agencies will have to display firmness and courage.

Another problem-area pertains to the politico-economic issues. Owing to inflationary trends and mounting shortages, both industrial and agricultural, the common man is finding it increasingly difficult to make both ends meet. Political and administrative mishandling have further contributed to the deepening of the prevailing gloom. The promises made by the political parties at the hustings raise the expectations of the people. Their non-fulfilment, however, results in greater frustration and discontent. In consequence, there is growing belief among the people that they can secure redress of their grievances only by having recourse to violence and disorder. Many politicians, with axes of their own to grind, play a big part in encouraging this dangerous belief, with the result that the energies of the government are most of the time diverted toward the preservation of law and order, while the more vital developmental problems remain neglected.

Bandhs and strikes organised by the political parties and trade unions to press for their demands often create serious law and order problems. These have become endemic and have been so much in evidence of late. A violent *bandh* poses the question of the protection of public and private property. It necessitates diversion of police forces from the regular duties

1. Edward Shils, "Indian Students : Rather Sadhus than Philistines," *Encounter*, XVII (September 1961).

to the *bandh* assignment which imposes a great strain on them, apart from avoidable public expenditure. A *bandh* is the very negation of the principle of rule of law and thus weakens the formal constitutional processes. Under the democratic rules of the game, the party in power is required to meet the opposition not on the streets but on the floor of the Parliament. However, in a situation created by a *bandh*, it has to face them with steel-helmeted police. The government is placed, in such circumstances, in an unenviable position. If the organisers of the *bandh* are detained, the government is branded as undemocratic. On the other hand, if it avoids confrontation, the *bandh* organisers will describe the *bandh* as a total success. If force is used to quell violence, the newspapers splash bold headlines about the orgy of police violence on the peaceful demonstrators; and if the police has orders to use restraint the same newspapers charge them for inaction.

Communal riots and inter-caste clashes are the other problem-areas in this regard. Such a confrontation and conflict erupts as a result of deep-rooted social malaise. A number of reasons could be given to explain this behaviour. The most important one, obviously, is economic. Extreme poverty causes anger and frustration and makes people more resentful, superstitious and touchy. In such a milieu every little event or incident or remark is likely to be enlarged out of all proportion and taken as an insult to the community. There is also a perceptible tendency, in such circumstances, to huddle in exclusive caste and communal groups. Another reason that makes the masses an easy prey to communal frenzy is their ignorance which will not go as long as they remain uneducated. These social evils create law and order problems in the form of riots and inter-caste tensions. Their solution requires strengthening of the social fabric. It would involve the creation of conditions in which the communal approach and attitudes become irrelevant to the social ethos. This will, however, not happen unless people at large feel economically and socially secure which would in turn require uplift of the masses.

The dangers posed by the problems of lawlessness and group violence require, *inter alia*, evolving of proper strategies in regard to law and order administration. The steps taken by the government in this regard have not completely succeeded so far because of various reasons. One such step has been the strengthening of the police force. Even the increase in numbers has not been commensurate to the growing responsibilities of this organisation. Moreover, this remedy may help in controlling individual crimes but this is not sufficient in the case of agitations. The other steps taken by the government such as detention without trial under preventive detention laws often lead to legal complications. The law and order administration in India, therefore, must necessarily equip itself with the requisite *perspectives* to face and counteract the challenges that are threatening the very basis of the social fabric in India. It should be realised that the law and order authority cannot afford to act merely as 'visiting firemen' or 'parachute jumpers.'

An important step to gear up the law and order machinery could be in the direction of modernisation and professionalisation of the police and the magistracy. Increasing professionalisation is called for because only highly professionalised functionaries will be able to cope with the complicated problems and social pressures that accompany mass unrest violence and crime.

Prof. S. P. Aiyar has highlighted some of these issues regarding the police in his book on "the Politics of Mass Violence in India". He writes :

> Precious little has been done to raise the morale of police services or to rehabilitate them in the minds of the masses. They still appear as tragic remnants of a bygone age. Corruption and inefficiency in the ranks, the outmoded procedures and methods of work and the attitude of the police themselves towards the public have all

contributed to deplete further the prestige of the police as custodians of the law. The common citizen often finds himself helpless without prompt assistance from the police but the latter are promptly ordered to trouble spots during agitations. Is it any wonder that the presence of the police often provokes greater mass fury ?[2]

Thus in our country, the image of the police carries a stigma. The popular attitude towards this organisation nursed during the colonial rule has persisted even after independence. It is often blamed for its role under the foreign rule, when it was a major instrument of the then British Government to maintain their power in this country. Even after independence it is still regarded as a power of repression, a power which always intervenes and acts against the wishes of the people. Those wishes of the people may or may not be genuine, but whenever, there is a violent expression of these wishes the only agency that intervenes is the police and, therefore, it is regarded as a force of repression and becomes the target of public hostility. Besides this, the realisation, that the police is a service organisation is lacking in the police itself despite the constantly changing political atmoshphere. It is, therefore, necessary for the police to adapt themselves to the changing conditions and this realisation should percolate to the level of the lowest functionary in the organisation.

A thorough examination of the problems and difficulties of the police is called for. These have, undoubtedly, increased since independence particularly in recent years as a result of unrest and turmoil in society. The problem has been further aggravated due to unplanned development of our crowded cities where the slum areas provide excellent breeding grounds for crimes. Confrontation with the agitators also creates a dilemma for the police. If they act swiftly and

2. S. P. Aiyar(ed.), *The Politics of Mass Violence in India* (Bombay : Manaktalas, 1967), p. 157.

use force to put down a clash, the public accuses them of 'brutality' and demands action against them. On the other hand, if they are lenient they are charged with dereliction of duty. It has created quite an uneasiness among policemen who feel the government is making them scapegoats to placate public opinion.

The problem of police vis-a-vis the students also deserves special attention as the student indiscipline should not be viewed only as a law and order problem. In a recent study on student-police relationship,[3] it has been observed that the students and police come from far divergent backgrounds. Students come from urban and policemen from rural backgrounds. Students are mostly from families with educational orientation while policemen from predominantly illitreate ones. Students are also in most cases more well-to-do than policemen. These contrasts in socio-economic backgrounds of the policemen and the students mould their perceptions and attitudes differently. It is no wonder, therefore, that the student-police interaction lacks harmony. All this creates mutual suspicions and the images they hold of each other are marked by distrust and uncertainty. One of the conclusions of the study is that the police should be properly trained to deal with the students. Students are a special class of community, more educated, conscious of political power, and young and energetic. The police come from a different background and therefore the recruitment and training procedures have to correct this imbalance. In this connection a suggestion has also come from some other quarters demanding the creation of a separate wing of police for campus duties which may be called 'Campus Police'. The suggestion is worth experimenting.

---

3. C. P. Bhambhri & Kuldeep Mathur, *Students, Police and Campus Unrest : A Study of Images and Perceptions* (Jaipur : HCM State Institute of Public Administration, December, 1972).

V

The imperatives of law and order administration in a developing country like India have, thus, to be viewed from a proper perspective. Law and order agencies in this country now face situations which are unprecedented and therefore need newer skills and careful handling. The citizen's role in the maintenance of law and order has a special significance in the changed circumstances. In the final analysis, it is the citizen for whose security law and order is to be maintained at all. Since, our democratic institutions are under a great strain because of the increasing trend towards violence and lawlessness, the citizen has to share his responsibility in this regard. Moreover these are the symptoms of a deep rooted social malaise and, hence, deserve greater attention and thorough probing. A proper diagnosis of these problems can help us in identifying the causes of the unrest. Further, this would also unable us in adopting proper strategies towards the emerging issues.

New Criminal Procedure Code and Its Impact on Maintenance of Law and Order

D. R. Mehta

One of the main features of the new Criminal Procedure Code, made effective from the 1st April, 1974, is that it has brought about a complete separation of Judicial Powers from the executive ones in the matter of criminal law administration all over the country. Persons dealing or concerned with maintenance of law and order are seriously addressing themselves to the question whether in the backdrop of the prevailing or even growing unrest or violence in the country, this has been an appropriate and timely change serving the larger interest of the country.

Till the advent of the new code, the law relating to criminal procedure was contained in the Code of Criminal Procedure Act, 1898, as amended in 1923, and 1955. In addition some local amendments were made by some State Legislatures. Under old code there were categories of Magistrates like District Magistrate, Sub-Divisional Magistrate and the Magistrate of First, Second and Third Class. The District Magistrate under the Indian Police Act was the Head of Criminal Administration. The Magistrates were required to

decide the criminal cases. They were also dealing with preventive sections such as :

(i) Security for keeping peace (Sec. 107 Cr. P.C.);

(ii) Security for good behaviour from persons disseminating seditious matter (Sec. 108 Cr. P.C.);

(iii) Security for good behaviour from vagrant and suspected persons (Sec. 109 Cr. P.C.);

(iv) Security for good behaviour from habitual offenders (Sec. 110 Cr. P.C.);

(v) Dispersal of assembly by use of civil force (Ch. IX of the old code);

(vi) Removal of public nuisances (Ch. X of the old code); and

(vii) Temporary orders in urgent cases of nuisances (Ch. XI of the old code) and apprehended danger. This included commonly known orders under Sec. 144 Cr. P.C.

The Magistrates, unless the State Governments had introduced partial or full scheme of separation of powers either by executive order or local amendment to the Cr. P.C. were under the administrative control of the State Government and not the High Courts. Appeals against their orders, however, were to lie to the Sessions Court and the High Court.

Such Magistrates being Revenue Officers also were required to tour their areas extensively to deal with revenue matters, to decide revenue cases and discharge other miscellaneous functions. This used to give them an insight into the nature of the area, life style and problems of the people, developing trend of disorder etc. Since they were also dealing with criminal cases, police would maintain regular official contact with them by sending reports and giving personal assessment about various persons and situation prevailing in the area.

In India, in the system of maintenance of law and order, the principle of duality was deliberately introduced. Law and

order is the concern both of the Police and the Magistracy. Particularly about the use of force, Police is required to obtain order of the Magistrate. This provides a cushion. When at times there is an inclination on the part of the Police to use force including taking recourse to firing, a second assessment of the situation by the Magistrate is required. This ensures that use of the force is avoided or is kept at the minimum. For a Magistrate in this system, therefore, the above mentioned intimate knowledge and regular contacts with the police are necessary. Indeed without that the delicate task of maintaining law and order may be seriously affected.

On the other hand it was felt that this system of Magistrates working under the administrative control of the executive of the State Government did not ensure justice to the people. It was presumed that such Magistrates were amenable to extraneous influences. It was argued that in principle also, it was untenable being against the theory of separation of powers.

On the conceptual plane the theory of the separation of powers has been holding a wide appeal to the political philosophers, constitutional experts, judges and lawyers since the days of Bodin and Montesquieu. In his book "The Republic" published in 1576 AD, Bodin expressed a view that some separation of powers was necessary. The Prince, he felt, should not administer justice in person but should leave such matters to independent judges. About 200 years later Montesquieu in his "The Spirit of Laws" published in 1748 enunciated the theory of separation of powers precisely as a fundamental principle in politics and government. It may be reproduced thus—"When the Legislative and Executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner".

Again there is no liberty if the judicial power be not separated from the legislative and executive. Were it joined with the legislative the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the cases of individuals[1]."

Seventeen years later Blackstone an English jurist expressed a similar view in his "Commentaries on Law of England".

The early American Statesmen while framing their "National Constitution were greatly influenced by Montesquieu and Blackstone. In the "Federalist", Madison expounded the same view point as under:

"The accumulation of all powers, legislative, executive and judical, in the same hands, whether of one, a few, or many and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny[2]".

In 1789 the French Constitutional Assembly declared that the country in which the separation of powers was not provided for did not have a constitution.

The principle thus got incorporated in American, French and several other constitutions. In England also the theory was invoked to emphasize independence of judges and supremacy of courts of law as part of the principles of the Rule of Law as propounded by Dicey.

1. The Spirit of Laws Bk, XI Ch. VI.
2. The Federalist, Essay XLVII.

With the advent of the British rule in India, Anglo Saxon jurisprudence was introduced in the country. This firmly entrenched the Diceyian ideas of the Rule of Law and the supremacy of the courts of Law. Particularly among the lawyers and judges, there were certain apriori assumptions such as the propensity of the executive to be arbitrary against which the judiciary was rule adhering, independent and just. Theory of separation of powers was taken to be axiomatic. There was hardly any study or assessment of alternative continental system of jurisprudence.

It is interesting to note that most of prominent framers of the Indian Constitution were lawyers and ex-judges. Perhaps no where else in the world, a constitution, which is not merely a legal but also a socio-political document, has been framed almost exclusively by such a group. It is true that our leaders were highly enlightened but perhaps because of this legal background of their lives, the Constitution turned out to be a more legalistic document than any other Constitution in the world. The theory of separation of powers was also specifically incorporated in the Constitution as Article 50, which may be reproduced as under :

> "The State shall take steps to separate the judiciary from the executive in the public services of the State."

However, even before the introduction of the Constitution, on the civil side there was already a complete separation of powers. In the field of criminal law also such a separation existed at all levels except that of Magistrate. In the latter case too, appeal against the decision of magistrate, even though he might be belonging to the executive, lay to judicial courts viz., Sessions Court and High Court. The state of non-separation therefore was quite limited. Besides it was subject to judicial review.

With the advent of the constitution, containing the above quoted directive regarding the separation, some States either through legislation or by executive orders introduced

separation, so that even at the level of magistrates only judicial officers were appointed for disposing of criminal cases, while to deal with matters relating to maintenance of law and order executive Magistrates were given powers. In many other States, however, no steps were taken to bring about the separation. In the third category of States like Rajasthan attempt was made to introduce the separation partially both in terms of territorial jurisdiction and the nature of prosecution. The cases under Indian Penal Code in certain areas were transferred to Judicial Magistrates; cases under the other criminal acts continued to be dealt with by the executive Magistrates. This was in addition to the exercise of power necessary for maintenance of law and order.

In 1955, the Government of India appointed the Law Commission under the Chairmanship of Shri M. C. Setalwad. It would be interesting to note that while the Law has three aspects, namely, (1) its making, (2) its execution, and (3) its interpretation, all of which should have been the concern of such a Commission, the persons who formed the Commission were drawn exclusively from among Judges and Lawyers, who deal only with interpretation part of law. While setting up such high powered Commissions in other fields, the Government generally tries to make them quite representative. For example, in case of Administrative Reforms Commission, apart from drawing civil servants as its members, eminent people from other walks of life, connected with administration in one capacity or other, were also made its members or Chairman. While it is true that the Law Commission had some of the most eminent lawyers and judges of the country as its chairman and members, its selection being confined only to other two class affected its approach in certain matters like the role of executive.

The Law Commission in its Fourteenth Report felt that since the separation of judiciary from the executive was a universally acknowledged principle. which had also been accepted as

one of the directive principles of State policy in India, it was unnecessary to discuss the advantages of separation and the arguments against it. However, since it found lurking opposition to the principle in some States it did enter into slight polemics. It started by quoting the opposite view expressed by the Chief Secretary of the Punjab Gevernment as under :

> "In the context of the situation that obtains in the Punjab, taking into consideration the incidence of crime and the nature of crime, the communal atmosphere, the constant law and order problem, Government are naturally keen to have as effective a machinery under their disposal as possible for dealing with different types of situations and the Government's view is that if there is complete separation...probably the Government's hands would not be as strong in dealing with crimes or dealing with law and other problem as they would be without separation." (1)

It also referred to somewhat similar views expressed by certain officers in Police and Magistracy in Rajasthan and Madhya Pradesh before it.

The Commission was of the opinion that this view seemed to plead for the perpetuation of the very evils which the separation of the judiciary from the executive control was designed to remedy. It would amount to complete negation of the very foundation of the system of our criminal jurisprudence which presumed innocence in favour of accused.

The impression one gets is that the Commission was basing its views on certain a priori assumptions based on the philosophies of the past emphasising individual rights; it did not consider the issue freely on the other important aspect of the social interest.

---

(1) Page 853, Law Commission of India, Fourteenth Report.

The Commission recommended a complete and uniform system of separation of powers through Central legislation. It also recommended that the powers under Section 108 to 110 Cr. P. C. should be with the Judicial Magistrates.

The Commission dealt with the reform in criminal administration in its Twenty-fifth, Thirty-second, Thirty-third, Thirty-fifth, Thirty-sixth, Thirty-seventh and Fourtieth Reports. The specific proposals to bring about complete separation was again discussed and that too in greater detail in the Forty-first report of the Law Commission which was submitted by it to the Government of India in 1969.

Based on these, the Code of Criminal Procedure Bill, 1970 was introduced in the Rajya Sabha. The broad outline of the Bill was indicated in the Statement of objects and Reasons appended with it are reproduced below :

> "One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on an all-India basis in order to achieve uniformity in this matter. To secure this, the Bill seeks to provide for a new set-up of criminal courts. In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal, as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court".

The Criminal Procedure Code was passed by the Parliament and became Law in 1974. Under this magistrates have been divided as judicial and executive ones. The judicial magistrates have a new hierarchy of Chief Judicial Magistrate, Metropolitan Magistrate, Magistrates First and Second Classes. On the executive side, there are Disctrict Magistrates, Sub-Divisional Magistrates, and other executive Magistrates, there being no further division among them as first or second class. The

District Magistrate continues to be responsible for criminal administration in a district as laid down by the Police Act. The Executive Magistrates deal with :

(a) Security for keeping peace (Sec. 107 Cr. P. C.); and

(b) Maintenance of Public Order and tranquility (Ch X of the New Code). This includes the power to disperse unlawful assemblies, removal of public nuisances and issuing of temporary orders. These orders are issued under Sec. 144 Cr. P. C.

All criminal cases apart from the above mentioned matters are now the exclusive concern of the Judicial Magistrates.

The Executive Magistrates are not required to deal with miscellaneous jobs like identification parades, grant of remands etc., recording of statements, confessions etc. On the other hand the Judicial Magistrates cannot be called upon to discharge law and order functions even in cases of emergency. In such a situation, or even otherwise, State Government may appoint Special Executive Magistrates.

In many sectors, the new Criminal Procedure Code, particularly its salient scheme of separation of powers, has been acclaimed as a great advance in criminal law administration. On the other hand some of the persons connected with maintenance of law and order have viewed it with apprehension. To them, while it might be a liberalisation of procedures and change of structure in favour of the individual, in larger social interest it might not be an appropriate, and certainly not a timely, step. To them, like many other constitutional directives, its implementation could have pended. Since the period following the adoption of the Act has also incidentally been one of restlessness, strife and general indiscipline because of rising prices and growing crime as also frustrations, their fears seem to have been confirmed to an extent. Indeed many people have started feeling whether for the sake

of promoting a principle, almost an article of faith, the more realistic considerations relating to the protection of the society might not have been fully and objectively gone into. Some serious people think that the type of troubles that arose in Bihar and Gujarat could have been more effectively dealt with, with the old Cr. P. C. While it is difficult to establish a direct causal relationship between growing violence and less effective handling, the two cannot, with certainty, be de-linked also.

The new Code can be criticised even on the touchstone of separation of powers. The provisions relating to security for good behaviour from habitual offenders, suspected persons and distributors of seditious matters contained in sections 108 to 110 Cr. P. C. are doubtless executive powers. The recommendation of the Law Commission to transfer these to Judicial Magistrates was not in consonance with the principle of separation of powers. This was accepted in the new Code and to that extent it also became inconsistent with the theory. It has, however, kept a saving clause under which the powers under these three sections could be re–transferred to the Executive Magistrates on a resolution of the concerned State Legislature. States like Rajasthan were the first to take advantage of this and to correct such a deviation, many other States are yet to follow the suit.

Secondly, even though the orders under sections 107 to 110 Cr. P. C. are in the nature of executive powers, u/s 123 of the Cr. P. C., Chief Judicial Magistrate can discharge any person bound down under these orders. This again militates against the theory of separation of powers which the Law Commission and the present Code profess to promote. The consequences of this are quite significant. While there is a riot or a similar situation and some persons are bound down by the Executive Magistrate, as a preventive measure, they can approach the Chief Judicial Magistrate and get discharged. This has become a common problem with the police and the

Executive Magistrates. It is, therefore, necessary that the powers of Judicial Magistrates in these matters should be eliminated and transferred to the Executive Magistrate like the District Magistrate. If this is not possible under the powers of the State Government to bring about local amendments in the Code, it deserves to be taken up at national level through an amendment Act of Parliament.

It is also interesting to note that while powers u/s 145 Cr. P. C. relating to disputes concerning land and water resulting in breach of peace presently vest with the Executive Magistrates, in the new Code there is an enabling provision for the transfer of these powers to Judicial Magistrates. This was not necessary because this power again is patently an executive one.

One impact of the new Cr. P. C. is that contacts between the police and the magistracy have become less and this, in turn, adversely affects maintenance of law and order. Under the old Cr. P. C., in the States where there was no separation of powers or where there was only limited separation of powers, there was a constant contact between the Police and the Magistracy. The Sub-Inspector of Police, Circle Inspector and others would be regularly visiting the courts of Executive Magistrates. This used to enable the Magistrates to know about the situation including the new trends that might be developing so as to enable preventive action. It also used to ensure some kind of personal understanding between the two wings of Police and Magistrates. Any one even remotely involved in the delicate process of maintenaace of law and order would appreciate the significance of such knowledge and equation. Under the new Cr. P. C., since there is hardly any criminal work in the Executive Magistrates' courts, the old relationship is slowly getting reduced and in course of time may even become atrophied. While at the level of the District Magistrate who under the Indian Police Act is still in charge of the criminal administration in the district, some kind of relationship exists

and continues with the police, at the level of the Sub-Divisional Magistrate or ordinary Executive Magistrate, this relationship is already showing the signs of decline. The only time the Magistrate is remembered, is, when the use of force is to be ordered. Since he is getting cut off from the general trends of law and order, the chances are, that he would become indifferent or ineffective. The result of all these factors is, that in a large number of firings these days, either no Magistrates are called or if they are called, they do not turn up on one pretext or the other. Many of the firings are thus resorted to by police on their own in self-defence. The old concept of deliberate duality in the matter of law and order, so as to reduce the excessive use of force by providing a cushion in matters involving human life, is being threatened. The chances are that with this development, there might be more firings and more killings, a result surely not intended by the framers of new Cr. P. C. Apropos of this, an incident needs to be recounted. In one of the U. P. towns where a riot had broken out, a Magistrate on duty was beaten up by the police as the policemen did not know as to who he was.

Even within the framework of the new Code, the situation can be improved by taking the following steps for increasing the contacts between the Police and the Magistracy;

(a) The copies of the F. I. Rs. must be sent to the S. D. Ms. and the District Magistrates so that the trend of the crime is known, and at least some troubles could be nipped in the bud by preventive action;

(b) There should be regular meetings between the magistrates and the police officers at the district and the sub-divisional levels. In fact, the crime and law and order situation should also be reviewed at the level of the sub-divisional magistrates. The station-house officers from out stations visiting the sub-divisional headquarters must invariably meet the S. D. Ms.

(c) The inspection of the police stations to be conducted by the Magistrates should be insisted upon and the reports properly followed up.

(d) The prosecution staff which has now been separated from the police, should at the sub-divisional level be under the administrative control of the S. D. M.

(e) As laid down in the Police Manual, riot-drills should be regularly organised so as to enable the police and magistracy to be together and in harmony; and

(f) Identification badges should be prescribed for the Magistrates so that they are immediately recognised.

Another impact of the new Cr.P.C. will be that it will make the executive more executive minded. In the old system, executive magistrates were exposed to the procedures of the courts and the principles of natural justice. They would soon appreciate that nobody should be condemned without being heard and that justice should not only be done but should appear to have been done. This kind of attitude on the part of magistrates would ensure restraint in their dealings. Now with very little court work, the possibility is, that the Executive Magistrates might behave differently. This would be an unhappy development. The remedy is that there should be regular arrangement with the High Court under which all the Executive Magistrates, at least in the beginning of their careers, are made to work as judicial officers.

The third problem of the new Code is that the Judicial Magistrates might ask for too high standard of evidence and that when they convict persons, the sentence awarded by them may be too low. The Judicial Magistrates at times might not appreciate the difficulties encountered by investigating officers and the executive authorities and might demand unattainable standards of proof and might resort to large-scale acquittals of accused persons where they deserve

conviction. This aspect was considered by the Law Commission which observed as under :

> This certainly is a matter which requires careful consideration. Though it is necessary that magistrates should be independent of the control of the executive, they should at the same time be made aware of the difficulties of the executive in dealing with the matters which come before them and the procedure adopted by the police in the investigation of the cases. Independence from the control of the executive does not mean looking askance at the executive or having a tendency to add to the difficulties of the executive. It appears to us, therefore, that it would be desirable to introduce in all the States where the judiciary is separated from the executive a system of training Judicial Magistrates such as now obtains, for instance, in the State of Madras. In that State, Judicial Magistrates are, before they are posted to their offices, subjected to a period of training in the revenue and police departments which enables them to appreciate the difficulties of executive officers and the way in which the investigation of crime is conducted. The witnesses who raised this aspect of the question before us readily admitted that such a course of training would result in the removal of the difficulties which they had mentioned. (1)

What is, therefore, needed is that this kind of training is organised both to the advantage of the judiciary and the executive. Up-till now, however, no such inclination has been shown in this regard.

Many of the above steps may not be adequate to deal with the growing problems of law and order. It is already being recognised that for economic offences special courts might have to be set up. While innocence of the accused should

(1) Page 857, Fourteenth Report of the Law Commission of India

be presumed, it should not be made a fatish. With the changed situation in the country, the 19th century jurisprudence cannot remain unaffected. The needs of the society will have to be given equal if not more weight. In this context, special executive courts might have to be set up and for them special procedure may also have to be laid down. Cr. P. C. lays down general procedure and is applicable to the trial of offences for which special procedure has not been prescribed. If in any Act dealing with special kinds of offences a special procedure is provided for in its body, Cr. P. C. will not apply. An experiment of this type has been made while framing the Rajasthan Goonda Act. Some States have also provided Criminal Procedure Adaptation Acts. This trend is inevitable if law and order is to be maintained in the country.

It was quite unusual in the past that people would file complaints or start prosecution against members of police force or other services of the Government. Now, however, the attitude is becoming different. People are becoming more legal and litigation minded. Many a time complaints against officials are filed in the courts of Magistrates. While on one hand, the responsibility of the law enforcing agencies has become more onerous in terms of volume and content, the additional danger of prosecution aggravates the situation. This problem will also have to be tackled under the new Cr. P. C. Section 197 of the old Code dealt with this aspect. The same section of the new Code too deals with this subject in a slightly enlarged scale. It is quoted as under :

> "197. Prosecution of judges and public servants :
> 1. When any person, who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction :

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

2. No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

3. The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

4. The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

As compared to the old Code, it has extended this protection even to the members of the force charged with the maintenance of public order. Thus, this would cover even the case of a police constable, provided a notification has been issued by the Government. The Rajasthan Government has already brought out a notification and probably some other Governments too might have done it.

In the context of the problem stated above, the following 3 aspects deserve to be considered :

(a) Even though no court under the above quoted section can take cognizance without the prior sanction of the Government, in actual practice many a time soon after a complaint against a public servant is filed, the court issues the process. This is neither in accordance with the law nor conducive to the morale of law enforcing agencies which is positively intended to be protected by the Code. The words "take cognizance" mean to start criminal action. The issue of process thus would amount to taking cognizance and would thus be violative of this Section unless prior approval of the Government has been obtained. Indeed in one particular district of Rajasthan, such process was issued without the prior sanction of Government to a large number of Government servants. The remedy against such a misuse of process is that such cases should be brought to the notice of the High Court for appropriate action. The prosecuting agencies should bring such cases to the notice of the Government which, in turn, could get in touch with the High Court for this purpose.

(b) Advantage of sub-section 4 of section 197 of the Code quoted above should be taken. The Central or the State Government should lay down that the criminal prosecutions against the Government servants would lie in the courts of Chief Judicial Magistrates who because of experience and knowledge of law are likely to provide better forums. It might amount to a preferential treatment to the Government servants but this is both necessary and permissible under the law and deserves to be availed of to keep up the sagging morale of law maintaining agencies. The State and Central Governments could also specifically say under this sub-section that no process against the Government servants would be issued unless prior sanction of the Government has been obtained.

(c) There are certain categories of Government servants who are intimately involved in the process of law implementation

and enforcement but which are not covered by this protection because they are removable from their offices by authorities lower than the Government. The Sub-Inspectors of Police, Tehsildars etc. are the examples. If this protection is not available to these vital links, they would be demoralised and the whole process of maintenance of law and order might be vitiated. The remedy is that in the Control, Classification and Appeal Rules which prescribe as to who is the authority to remove a Government servant from service should be so amended that the officers belonging to these categories become removable under the orders of the Government and thereby get the benefit of protection.

There is yet another aspect. The Judicial Magistrates are not very mobile. The result is, that for certain offences like the offences under the Motor Vehicles Act or under Police Act on the spot decisions have now become unusual and delay in the disposal of such small cases has increased. This again is not a very happy development.

The new Criminal Procedure Code has liberalized the procedures in favour of individual accused. To an extent this is a welcome and happy advance, but on the other hand it does not reflect the concern for protection of society to the same degree. It has relied too much on the theory of the separation of powers. In the present situation it might need some supplemental efforts so that the law and order enforcing agencies are not hamstrung.

Bibliography

1. AFANASYEV, V. : Marxist philosophy. 1962. Moscow, Foreign Languages.
2. A.I.R. 1956, S.C. 246.
3. A.I.R. 1970, S.C. 564.
4. A.I.R. 1973, S.C. 1461.
5. AIYER, S.P. : Politics of mass violence in India. 1967. Bombay, Manaktala.
6. Amrit Bazar Patrika. October 29, 1966.
7. Annals. Vol. 358. March 1965.
8. BAYLEY, D.H. : Police and political development in India. 1969. N. J. Princeton University. 256 pp.
9. Bihar Police Commission's Report.
10. Britain 1971 : An official handbook.

11. CARDOZO, Benjamin N. : Nature of the judicial process. 1921.

12. C.B.I. Bulletin. Vol. 6. September 1972.

13. CHANDIDAS, R. (Ed.) : India votes; Source book of Indian elections. 1968. Bombay, Popular.

14. COCKER, F.W. : Recent political thought. 1934. London. 541 pp.

15. Code of Criminal Procedure of India.

16. DAVID, J. Bordua (Ed.) : Six sociological essays. 1967. N. Y., John Wiley.

17. DESHMUKH, C. D. : Report of the Study Team on Machinery of the government of India and its procedures of work.

18. DHYANI, S.N. : Right to strike. 1972. Delhi, S. Chand.

19. GAJENDRAGADKAR, P. B. : Law liberty and social justice. 1965. Bombay, Asia.

20. GOVERNMENT OF INDIA : Constitution of India. 1970. Delhi, Publication Division.

21. Hindustan Times. May 26, 1973.

22. Hindustan Times. July 1, 1973.

23. HOOJA Committee, Report on Police Reforms in India. N. D., Ministry of Home. 1972.

24. Indian Express. March 19, 1969.

25. Indian Express. October 16, 1972.

26. Indian Express. August 12, 1973.

27. Indian Journal of Public Administration. : Vol. 17 (4), Oct.-Dec. 1971.

28. Indian Journal of Public Administration. January 1973.

29. Indian Police Journal. 1961.

30. JHERING : Law as a means to an end. 1913. Baston.

31. Journal of Constitutional and Parliamentary Studies. Vol. 4(4), Oct.-Dec., 1970.

32. Journal of Criminal Law, Criminology and Police Science. Vol. 62, Sept., 1972.

33. Journal of the Society for the Study of State Governments. July-Dec., 1972.

34. KHERA, S. S. : District administration in India. 1964. Bombay, Asia.

35. KOHLER : Philosophy of law. 1914.

36. KOTHARI, Rajni : Politics in India. 1970. N. D., Orient Longman.

37. KRABBE, H : Theory of sovereignty of laws.

38. KRISHNAMURTHY, K. : Police, Diaries, Statements, Reports, Investigation, Prosecution, Identification, Interrogation, Discipline and Duties of Police Officers. 1966. Allahabad, Law Publishers.

39. KUMARMANGALAM, S. Mohan : Judicial appointments; Analysis of the recent controversy over the appointment of the Chief Justice of India. 1973. N.D., Oxford and I.B.H.

40. LASKI : Studies in law and politics.

41. MICHAELS, R. : Political parties. 1959. N Y., Dover Publications.

42. MISRA, B.B. : Indian middle classes; Their growth in modern times. 1961. N. Y., Oxford University.

43. MOON, Renderel (Ed.) : Wavell; the Viceroy's Journal. 1973. London, Oxford University.

44. MURTY, V. V. R. : Non-violence in politics. 1958. Delhi, Frank Bros & Co.

45. MYRDAL, Gunnar : Soft state. 1972. London, Penguin Books.

46. NEHRU, Jawahar Lal : Jawahar Lal Nehru's Speeches (March 1953-April 1963). N. D., Publication Division.

47. PARK and TINKER : Leadership and political institutions in India. 1960. Madras, Oxford University.

48. Police. Vol. 16, September, 1971.

49. Police. Vol. 16, January, 1972.

50. Police Journal. December, 1971.

51. Police Journal. Jan-March, 1972.

52. Progress Report of Police Department. 1972.

53. Rajasthan police annual administration report. 1971.

54. RAO, BHALE C. N. (Ed.) : Administration politics and development in India. 1972. Bombay, Lalvani.

55. Report of Hooja Committee on police reforms in India. 1972. N. D.

56. ROSEN, George : Democracy and economic change in India. 1965. Berkeley, University of California.

57. ROY, N. C. : Civil service in India.

58. ROY, R. and KOTHARI, S. L. : Relation between politicians and administrators at the district level. 1969. Delhi, I. I. P. A.

59. SIRCAR, H. N. : West Bengal Police Commission.

60. SITARAMAYYA, Pattabhi : History of the Indian National Congress. Vol. I. 1946. Bombay, Padma.

61. STAMMLER : Theory of Justice. 1925. New York.

62. Staetsman. February 14, 1972.

63. SWERDLOW, Irving (Ed.). : Development administration. 1963. Syracuse University.

64. Times of India. October 15, 1973.

65. Times of India. March 20, 1974.

66. Transactions. National Police Academy. Mt. Abu. Vol. 6. November, 1965.

67. Transactions Series. Vol. 8. Central Police Training College. Mt. Abu.

68. Transactions. National Police Academy. Mt. Abu. Vol. 11. November, 1968.

69. Transactions. National Police Academy. Mt. Abu. 1970.

70. Transactions. National Police Academy. Mt. Abu. Vol. 14. November, 1970.

71. Transactions. National Police Academy. Mt. Abu. Vol. 16. November, 1971.

72. WILSON, O. W. : Police administration. 2nd Ed. 1963. N. Y., Mcgraw-Hill. 528 pp.

Index